



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 21, 2026

TIME: 10:18 AM

WSR 26-09-120

Agency: Office of Superintendent of Public Instruction (OSPI)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 25-21-067 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 392-172A WAC – Provision of Special Education Services; and WAC 392-140-600 through 392-140-685 – State Special Education Safety Net Funding

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 27, 2026	10:00 a.m.	Virtual Public Hearing via Zoom (call-in option also available). Participation link available on OSPI Rules webpage:	The hearing will be held as a virtual public hearing, without a physical meeting space. Please visit the OSPI Rules webpage for information on participating in the hearing: ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity For participation questions, please email: sirena.wu@k12.wa.us
June 3, 2026	2:00 p.m.	ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity	

Date of intended adoption: June 5, 2026 (Note: This is **NOT** the effective date)

Submit written comments to:

Name Scott Raub, Assistant Director, Special Education

Address OSPI, PO Box 47200, Olympia, WA 98504

Email scott.raub@k12.wa.us

Fax 360-586-0247

Other speced@k12.wa.us

Beginning (date and time) April 22, 2026, 8:00 a.m.

By (date and time) June 3, 2026, 5:00 p.m.

Assistance for persons with disabilities:

Contact Sirena Wu, OSPI Rules Coordinator

Phone 360-480-9317

Fax

TTY 360-664-3631

Email sirena.wu@k12.wa.us

Other

By (date) May 20, 2026

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal seeks to amend, add new, and repeal sections under the Washington Administrative Code (WAC) Chapter 392-172A, Rules for the Provision of Special Education, and to amend and repeal sections of WAC 392-140-600 through 392-140-685 concerning State Special Education Safety Net Funding. Specifically, the proposed rules make the following changes to existing rules:

(1) Age of Eligibility

- Amending WACs 392-172A-01035, 392-172A-02000, 392-172A-02005, 392-172A-02055, 392-172A-04015, and 392-172A-07035 to reflect eligibility to age 22.

(2) Placement in Private or Public Settings by Public School Districts

- Amending WAC 392-172A-04080 to include applicable references to Revised Code of Washington (RCW) and expand applicability to other contracted placements and educational service district (ESD) programs.
- Amending WAC 392-172A-04085 to include applicable references to RCW regarding nonpublic agency (NPA) contract requirements and establish minimum contract requirements for other contracted placements and ESD programs.
- Amending WAC 392-172A-04090 regarding updated NPA approval procedures and new procedures for “sponsoring” school districts.

- Amending WAC 392-172A-04095 regarding minimum standards for OSPI approval of other contracted placements and ESD programs.
- Amending WAC 392-172A-04100 regarding monitoring and complaint procedures for NPAs, other contracted placements, and ESD programs.
- Amending WAC 392-172A-04105 and 392-172A-04110 regarding OSPI authority to authorize placements with NPAs, other contracted placements and ESD programs.

(3) Determining Eligibility for Students with Specific Learning Disabilities

- Amending WAC 392-172A-03045 to remove the severe discrepancy method option and require response to scientific research-based intervention procedures – effective August 1, 2028.
- Amending WAC 392-172A-03055, 392-172A-03060, and 392-172A-03080 to remove references to severe discrepancy method – effective August 1, 2028.
- Repealing WAC 392-172A-03065 and 392-172A-03070 regarding severe discrepancy method – effective August 1, 2028.

(4) Updates to Existing Requirements for the Provision of Free Appropriate Public Education (FAPE)

- Safety Net Awards (WAC 392-140-600 through 392-140-685)
 - Amending WAC 392-140-605 regarding award application standards and removing community impact.
 - Amending WAC 392-140-608 removing obsolete language regarding applications received after published deadline.
 - Amending WAC 392-140-609 regarding IEP review areas for awards.
 - Amending WAC 392-140-616 regarding award application standards.
 - Amending WAC 392-140-626 regarding award application standards; moved to WAC 392-140-605.
 - Amending WAC 392-140-643 regarding safety net committee procedures.
 - Amending WAC 392-140-646 regarding safety net award adjustments.
 - Amending WAC 392-140-675 to remove obsolete community impact language.
 - Amending WAC 392-140-685 to remove obsolete fiscal carryover language.
 - Repealing WAC 392-140-60110 and 392-140-617 regarding community impact.
- Personnel Qualifications
 - Amending WAC 392-172A-02090 to include “adapted physical education specialty endorsement staff” to list of appropriately qualified special education staff; correct language regarding preendorsement authorization.
- Dispute Resolution
 - Amending WAC 392-172A-05025 regarding applicability of complaint procedures to Washington State School for the Blind and Washington State School for the Deaf.
 - Amending WAC 392-172A-05030 regarding procedures for responding to community complaints.
- Referral/Evaluation Timelines
 - Amending WAC 392-172A-02080 to update referral timeline to 20 school days.
 - Amending WAC 392-172A-03005 to update referral timeline to 20 school days; require draft evaluation report at 35 school days; eligibility meeting and decision in 40 school days.
 - Amending WAC 392-172A-03015 to require draft evaluation report at 35 school days; eligibility meeting and decision in 40 school days.
- Behavioral Supports
 - Amending WAC 392-172A-01092; 392-172A-01107; 392-172A-01109; 392-172-01162 to align definitions with RCW 28A.600.485.
 - Repealing WAC 392-172A-01163 regarding definition of restraint device in alignment with RCW 28A.600.485.
 - Adding WAC 392-172A-01088 regarding the definition and elements of a functional behavioral assessment.
 - Amending WAC 392-172A-01031 regarding the definition and elements of a behavioral intervention plan (BIP).
 - Amending WAC 392-172A-02076 to align with RCW 28A.600.485; add “deprivation of communication” to list of prohibited practices; correct outdated pronoun usage.
 - Amending WAC 392-172A-02105 regarding updated conditions and limitations on advanced educational planning in alignment with RCW 28A.600.485; adds BIP requirement; removes “emergency response protocols” in favor of “crisis de-escalation and safety plan.”
 - Amending WAC 392-172A-02110 regarding alignment with RCW 28A.600.485; continuous visual monitoring as a condition for the use of isolation; adds limitation on using isolation to address self-harm behaviors.
 - Amending WAC 392-172A-03090 regarding crisis de-escalation and safety plan.

(5) Correcting Outdated Information

- Amending WAC 392-172A-01010 to correct language from “juvenile” inmates to “student” inmates.
- Amending WAC 392-172A-01035 regarding outdated language for definition of Emotional Behavioral Disability.
- Amending WAC 392-172A-01040; 392-172A-01135; 392-172A-01142; 392-172A-01155; 392-172A-01190; 392-172A-02060; 392-172A-03035; 392-172A-03050; 392-172A-03105; 392-172A-05010; 392-172A-05015; 392-172A-

05125; 392-172A-05145; 392-172A-05190; 392-172A-05220; and 392-172A-05235 to correct outdated pronoun usage.

- Amending WAC 392-172A-02005 regarding outdated description of correctional facilities and outdated pronoun usage.
- Amending WAC 392-172A-03100 and 392-172A-05001 to correct reference to qualified interpreters under RCW 28A.183.010.
- Amending WAC 392-172A-05085 regarding outdated filing address.
- Amending WAC 392-172A-05135 regarding outdated description of correctional facilities.

Reasons supporting proposal: OSPI has the authority under state statute to develop administrative rules to implement federal statutes and state regulations governing special education services to students. These changes are necessary to (1) address changes to the age of eligibility in accordance with Substitute Senate Bill (SSB) 5253 (2025); (2) address changes to the administration of students eligible for special education services placed in private settings or public educational service district settings by public school districts in accordance with Engrossed Second Substitute Senate Bill (E2SSB) 5315 (2023); (3) phase out the use of the severe discrepancy methodology and clarify existing procedural requirements for determining eligibility for students with specific learning disabilities; (4) update and clarify existing requirements under current state law regarding safety net awards (WAC 392-140-600 through 392-140-685), personnel qualifications, dispute resolution, referral/evaluation timelines, and behavioral supports applicable to the provision of free appropriate public education (FAPE) to students eligible for special education services; and (5) make changes and corrections to outdated language and references to other applicable sections of the Revised Code of Washington (RCW) and Washington Administrative Code (WAC).

Statutory authority for adoption: RCW 28A.150.290; RCW 28A.155.090; 20 USC §1400 et seq.

Statute being implemented: Chapter 28A.155 RCW (Special Education)

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION: 34 CFR 300 (Individuals with Disabilities Education Act)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting Special Education	Scott Raub, Assistant Director,	OSPI, 600 S. Washington St, Olympia, WA	360-725-6075
Implementation Superintendent, Special Education	Dr. Tania May, Assistant	OSPI, 600 S. Washington St, Olympia, WA	360-725-6075
Enforcement Superintendent, Special Education	Dr. Tania May, Assistant	OSPI, 600 S. Washington St, Olympia, WA	360-725-6075

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
- Name
 - Address
 - Phone
 - Fax

TTY
Email
Other

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW [19.85.030](#).

Explanation of how the above exemption(s) applies to the proposed rule: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

(2) Scope of exemptions: *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name
Address
Phone
Fax
TTY
Email

Other

Date: April 21, 2026

Name: Chris Reykdal

Title: State Superintendent of Public Instruction

Signature:

