



CONCISE EXPLANATORY STATEMENT

OSPI Rule Making

DATE: October 14, 2026

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SUBJECT: Chapter 392-172A WAC; WAC 392-140-600 through 392-140-685
Rule-making Order filed as WSR 26-21-034, filed on October 14, 2026

RCW 34.05.325(6) requires that when a state agency adopts a permanent rule (known as Washington Administrative Code or WAC), the agency must prepare a Concise Explanatory Statement (CES). This CES provides the following:

- I. Identifies OSPI's reasons for adopting the rule or rule changes.
- II. Describes differences (*if any*) from the proposed to the final version of the rule.
- III. Summarizes comments, by category/subject matter, received at public hearings or in written form on the proposed version of the rule and indicates whether the final rule was changed as a result of the comments.

The Office of Superintendent of Public Instruction (OSPI) maintains on file the Concise Explanatory Statement which is accessible upon request to everyone who testified at public hearings, sent a written comment, or asks to receive the CES. This document also serves as the summary of public hearing comments to the agency head required under RCW 34.05.325(4).

Chapter 392-172A WAC; WAC 392-140-600 through 392-140-685

I. REASON FOR ADOPTION

OSPI proposed amendments and additions to address the following sections of 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. The proposal seeks to specifically amend, add new, and repeal sections in the following general areas of the existing rules:

(1) Age of Eligibility – Amend sections addressing changes to the age of eligibility to age 22 for special education services in accordance with Substitute Senate Bill (SSB) 5253 (2025).

(2) Placement in Private or Public Settings by Public School Districts – Amend sections addressing 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) Determining Eligibility for Students with Specific Learning Disabilities – Amend sections phasing out the use of the severe discrepancy methodology and clarify existing procedural requirements for determining eligibility for students with specific learning disabilities, effective August 1, 2028.

(4) Updates to Existing Requirements for the Provision of Free Appropriate Public Education (FAPE) – Amend sections to update and clarify existing requirements under current state law regarding safety net awards (WAC 392-140-600 through 392-140-685); update personnel qualifications; update and clarify dispute resolution procedures; update and clarify referral/evaluation timelines in accordance with Engrossed Substitute House Bill 2557 (ESHB 2557); and update behavioral supports applicable to the provision of FAPE to students eligible for special education services.

(5) Correcting Outdated Information – Amend sections to correct typographical errors, update references to other applicable sections of the Revised Code of Washington (RCW) and WAC, and other rule changes that are technical in nature.

II. **WERE CHANGES MADE SINCE THE RULE WAS PROPOSED?** *(check one)*

- ☐ The text being adopted does not differ from the text of the proposed rule.
- ☐ The text being adopted contains only editorial changes from the proposed rule.
- ☒ The text of the adopted rule varies from the text of the proposed rule. Explanation of changes (other than editing changes):

The differences between the rules proposed on April 21, 2026 (WSR 26-09-120) and the final adopted rules are described below in the following chart. OSPI appreciates the many thoughtful comments and suggestions received. OSPI made these changes in response to all comments received in an attempt to ensure clarity and consistency within these rules and to meet the intent of the authorizing statutes (Chapters 28A.640 and 28A.642 RCW).

Section	Edit/Change
WAC 392-172A-01031 Behavioral intervention plan.	The proposed rule amendments have been withdrawn in response to public comments; the existing rule will remain unchanged.

Section	Edit/Change
WAC 392-172A-01088 Functional behavioral assessment.	The proposed new rule has been withdrawn in response to public comments.
WAC 392-172A-02076 Prohibited practices.	<p>Additional clarification has been added to the proposed rule in response to public comments and to ensure consistency with RCW 28A.600.485 as follows:</p> <p>Subsection (2)(j) is amended to state "(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 or otherwise subjected to mechanical, chemical, or life-threatening restraints as defined under RCW 28A.600.485."</p> <p>Subsection (2)(k) is amended to state "(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 <u>or escort that is life threatening or that interferes with the student's breathing or blood flow.</u>"</p>
WAC 392-172A-02105 Crisis de-escalation and safety protocol.	<p>Additional clarification has been added to the proposed rule in response to public comments and to ensure consistency with RCW 28A.600.485 as follows:</p> <p>The section title is amended to read "WAC 392-172A-02105 Crisis de-escalation and safety plan <u>protocol</u>."</p> <p>Subsections (1)(a)-(c) is amended to state "(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 a crisis de-escalation and safety plan <u>protocol</u> to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this chapter. The crisis de-escalation and safety plan <u>protocol</u>, if developed, must be incorporated into a student's IEP. Crisis de-escalation and safety plans <u>protocol may include, but do not require, the use of restraint, and</u> shall not be 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 <u>protocols</u> are subject to the conditions and limitations as follows:</p>

Section	Edit/Change
	<p>(a) The student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the crisis de-escalation and safety plans <u>protocol</u> to be adopted;</p> <p>(b) <u>If the crisis de-escalation and safety protocol includes the use of restraint, there must be documentation of a parent request for its use, and Aa</u> licensed health care provider <u>must</u> documents in writing that the intervention is medically necessary; and</p> <p>(c) The crisis de-escalation and safety plan <u>protocol</u> must specify:"</p> <p>Subsection (1)(f) has been added, stating "<u>(f) The use of isolation, as defined by RCW 28A.600.485, as a planned behavioral intervention within any crisis de-escalation and safety protocol is prohibited.</u>"</p> <p>Subsection (2) is amended to read "(2) School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485, regardless of whether the use of restraint is included in the student's crisis de-escalation and safety plan <u>protocol</u>."</p>
WAC 392-172A-03045 District procedures for specific learning disabilities.	<p>The proposed rule has been modified in response to public comments as follows:</p> <p>"<u>(1) 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 must develop procedures for the identification of students with specific learning disabilities utilizing a process based on the student's response to scientific, research-based intervention.</u></p> <p><u>(2) Beginning August 1, 2028, any district not solely utilizing a process based on a student's response to scientific, research-based intervention, must have an implementation plan approved and reviewed annually by the OSPI special education division allowing for the combination of both a severe discrepancy methodology and a process based on a student's response to scientific, research-based intervention, provided that the evaluation process used is the same for all students within the selected grades or buildings within the</u></p>

Section	Edit/Change
	<u>school district and is in accordance with approved district procedures.</u>
WAC 392-172A-03055 Specific learning disability— Determination.	<p>Additional clarification has been added to the proposed rule in response to public comments as follows:</p> <p>Subsection (2)(b) is amended to state “(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. <u>Any such consideration of a pattern of strengths and weaknesses must be made in conjunction with, and shall not supplant, the response to scientific, research-based intervention data required under (a) of this subsection.</u>”</p>
WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities.	<p>The proposed rule has been revised in response to public comments as follows:</p> <p>Subsection (1)(e) is amended to state “(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</p> <p>(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; and</p> <p>(B) <u>A If used as part of the eligibility determination under (A), 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.</u>”</p>
WAC 392-172A-03090 Definition of individualized education program.	<p>Edits have been made to the proposed rule to ensure consistent terminology is used throughout the chapter:</p> <p>Subsection (1)(i) is amended to read “(i) Crisis de-escalation and safety plan <u>protocol</u>, 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.”</p>

Section	Edit/Change
<p>WAC 392-172A-04080</p> <p>Applicability and authorization.</p>	<p>Additional clarification has been added to the terminology used within the proposed rule as follows:</p> <p>Subsections (1)(b)-(c) is amended to read "(b) An authorized <u>single-student</u> case contracted placement with other public and private agencies under WAC 392-121-188 to provide special education and related services to eligible <u>elementary or secondary school</u> 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.</p> <p>(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 <u>to an eligible elementary or secondary school student</u> when the school district cannot provide FAPE for the student within the district."</p> <p>Subsections (2)(a)-(d) is amended to read "(2)(a) When a school district seeks authorization from OSPI for a <u>single-student</u> 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.</p> <p>(b) School districts must provide the OSPI special education division with the opportunity to review, upon request, the <u>single-student</u> case contract for placement and any related documentation provided in accordance with WAC 392-172A-04095 supporting placement.</p> <p>(c) School districts must adhere to any conditions and/or limitations set by the OSPI special education division on <u>single-student</u> case contracted placements authorized under this section.</p> <p>(d) School districts must annually renew authorized <u>single-student</u> case contracted placements under this section with the OSPI special education division."</p>

Section	Edit/Change
	<p>Subsection (3)(a) is amended to read “(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 <u>eligible elementary and/or secondary school</u> students under this section and ensure that the program follows the applicable contracting and reporting requirements under WAC 392-172A-04085.”</p>
<p>WAC 392-172A-04085 Responsibility of the school district.</p>	<p>Additional clarification has been added to the terminology used within the proposed rule as follows:</p> <p>Subsection (2) is amended to read “(2) A school district that places a <u>an elementary or secondary school</u> student eligible for special education services with <u>pursuant to a single-student case</u> 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:”</p> <p>Subsections (2)(f)-(g) is amended to read: “(f) An acknowledgment that the <u>single-student case</u> 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;</p> <p>(g) A schedule, of at least once per academic term, for the <u>single-student case</u> contracted placement or ESD program to provide to the school district with student progress reports;”</p> <p>Subsection (2)(j) is amended to read: “(j) An assurance that the <u>single-student case</u> contracted placement or ESD program will notify the school district and OSPI of program changes that may affect its ability to fulfill the contract and of any complaints received regarding services provided to students eligible for special education services;”</p>
<p>WAC 392-172A-04090 Approval of nonpublic agencies.</p>	<p>Parts (a)-(d) of the proposed rule have been withdrawn and consolidated to align with RCW 28A.300.690 as follows:</p> <p>Subsection (3) is amended to state “(3) Annual review and reauthorization. Nonpublic agencies will submit an application annually to OSPI for continuing nonpublic agency status-</p>

Section	Edit/Change
	<p>(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).</p> <p>(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.</p> <p>(c) OSPI will annually review school district on-site visit reports and applications for continuing nonpublic agency status to ensure nonpublic agencies remain in good standing with the requirements of RCW 28A.300.690.</p> <p>(d) <u>and</u> OSPI will conduct a full reauthorization of nonpublic agencies every three to five years in accordance with RCW 28A.300.690."</p>
<p>WAC 392-172A-04095 Authorization requirements for single- student contracted placements and educational service district programs.</p>	<p>Additional clarification has been added to the terminology used within the proposed rule as follows:</p> <p>The section title is amended to read "WAC 392-172A-04095 Authorization requirements for <u>single-student</u> contracted placements and <u>educational</u> service district programs."</p> <p>Subsections (1)(a)-(b) is amended to read "(1) A <u>single-student</u> ease contracted placement under WAC 392-172A-04080 (1)(b) must meet the following requirements to be approved:</p> <p>(a) Maintain applicable facility licenses and applicable agency approvals of the state in which the placement is located.</p> <p>(b) Employ or contract with appropriately qualified staff <u>providing services to the student</u> who meet the licensing requirements of the state in which the placement is located."</p>
<p>WAC 392-172A-04100 Notification of program changes and complaints.</p>	<p>Additional clarification has been added to the terminology used within the proposed rule as follows:</p> <p>Subsections (1)-(2) is amended to read "(1) 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</p>

Section	Edit/Change
	<p>students. OSPI will review these program changes with affected districts to determine whether the authorized contracted placement remains able to provide contracted services to public <u>elementary and secondary</u> school students eligible for special education services.</p> <p>(2) 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 <u>elementary and secondary</u> school students eligible for special education services."</p> <p>Subsection (3) is amended to read "(3) Complaints <u>pursuant to RCW 28A.155.240</u> 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."</p>
<p>WAC 392-172A-04110 State responsibility for authorized contracted placements.</p>	<p>Additional clarification has been added to the terminology used within the proposed rule as follows:</p> <p>Subsection (2) is amended to read "(2) Disseminate copies of applicable standards to authorized contracted placements to which a public agency has referred or placed a <u>an elementary or secondary school</u> student eligible for special education services; and"</p>
<p>WAC 392-172A-05085 Due process hearing request filing and response.</p>	<p>The proposed rule has been revised after receiving public comments as follows:</p> <p>Subsection (1)(a)(ii) is amended to state "(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:</p> <p>Mail:</p> <p>Office of Administrative Hearings 16201 E. Indiana Avenue, Suite 3000 Spokane Valley, WA 99216 Fax: 206-587-5135</p>

Section	Edit/Change
	Electronically: Successfully uploading documents through the filing portal operated <u>methods determined</u> by the office of administrative hearings."

III. PUBLIC COMMENT

OSPI filed the proposed rules on April 21, 2026. The CR-102 Notice of Proposed Rulemaking was published in the Washington State Register as WSR 26-09-120. Public hearings were held on May 27, 2026, and June 3, 2026 via Zoom in Olympia, Washington. Written comments on the proposed rules were accepted via mail, fax, and e-mail through June 3, 2026.

Public comments received concerning this rule making activity (written and spoken):

(check one)

- ☐ No public comments were received for this rule making.
- ☒ Public comments were received for this rule making. Comments and responses are summarized in the following tables.

SUMMARY OF PUBLIC COMMENTS and OSPI RESPONSES

A. Age of Eligibility

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
1. Many commenters expressed support for the changes throughout the WAC to clarify that eligibility for special education services now extends to age 22.	OSPI appreciates the feedback provided.

B. Placement in Private or Public Settings by Public School Districts

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
1. One group of commenters stated that they believe the addition of contracting requirements for single-student contracts and educational service districts (ESDs) providing special education services to students is a positive change.	OSPI appreciates the feedback provided.
2. One organization shared a comment appreciating the addition of accountability and authorization, approval of non-public agencies and authorization requirements.	OSPI appreciates the feedback provided.
<p>3. A group of commenters recommended adding the following (or similar) language to WAC 392-172A-04085(2):</p> <p>"A description of any services listed in student(s) individualized education program(s) which the single case contracted placement or educational service district (ESD) will provide and a confirmation of appropriate staffing with the necessary certifications to provide those services."</p> <p>"A confirmation that all staff working with students with individualized education programs will receive a copy of the student(s) IEP(s) along with any attached documents such as behavioral intervention plans, that staff will provide the accommodations and interventions listed in the student(s) IEP(s) and attached documents, and will receive any training necessary to implement the IEP(s) and attached documents."</p>	<p>OSPI believes subsection (2)(d) of the proposed rule under WAC 392-172A-04085 adequately addresses the commenters' recommendation and aligns, as written, with the expectations for similar contracts with authorized entities under RCW 28A.155.060. The additional responsibilities of school districts listed in subsections (3)-(8) of the proposed rule also adequately encompass the areas included in the commenters' recommendation.</p> <p>Furthermore, the proposed rule under WAC 392-172A-04095 for the authorization of single-student and ESD contracted placements includes a requirement that placements employ or contract with appropriately qualified staff and an ongoing expectation that service providers are "conducting regular staff trainings and evaluations that address staff competencies." OSPI believes the proposed rules, taken together, are consistent with the commenters' suggestions and no further changes are needed.</p>
4. A group of commenters recommended adding the following (or similar) language to	OSPI believes the recommended language for subsection (3)(b) is not necessary since

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>WAC 392-172A-04085(3)(b):</p> <p>"and will review Student's IEP in advance of the placement and confirm that all services, accommodations, and other supports or interventions including transportation and assistive technology will be provided either by the school district or by the placement in accordance with the terms of the contract described in sections (2)(e) and (2)(f)."</p>	<p>subsection (3)(a) already requires districts to ensure that special education and related services are provided in conformance with a student's individualized education program (IEP) and subsection (4) requires districts to ensure students receive FAPE. The proposed rule, as written, also aligns with the expectations for similar contracts with authorized entities under RCW 28A.155.060 and no further changes are necessary.</p>
<p>5. One group of commenters expressed support for the changes being proposed under WAC 392-172A-04095 and appreciated the steps OSPI is taking to ensure that both educational service districts and single-student contracted placements meet the needs of students in those placements. The commenters particularly appreciated the requirement that ESDs employ or contract with appropriately certified or qualified staff and have sufficient physical facilities to meet program needs. Because staff turnover can be high in such programs, commenters recommended that ESDs report annually on appropriately certified or qualified staff.</p>	<p>OSPI supports the idea that contracted placements with ESDs must annually report that appropriately certified and/or qualified are employed or contracted by the ESD. OSPI believes, however, that the best way to meet this objective is not with a specific rule, but rather by developing a system of ongoing monitoring that includes regular site visits as proposed under WAC 392-172A-04095(2)(g) and the reauthorization process as proposed under WAC 392-172A-04080(3)(c). This approach ensures that OSPI can intervene more often than annually and as needed should staffing levels at a contracted ESD placement become a concern.</p>
<p>6. A group of commenters shared their agreement with and appreciation for the reporting requirements applied to all authorized contracted placements under WAC 392-172A-04100. Commenters recommended clarifying in subsection (3) the appropriate method of complaint/reporting to OSPI about any failure to maintain applicable authorization standards: "A complaint may be made via the process under WAC 392-172A-05025." The commenters also suggested language to clarify if a complainant can use the state complaint process under WAC 392-</p>	<p>OSPI agrees with the commenters' recommendation to clarify the appropriate complaint process. The proposed rule to be adopted under WAC 392-172A-04100(3) has been amended to include a direct reference to the complaint process described under RCW 28A.155.240. (<i>See Section II above for the text of the final rule under WAC 392-172A-04100 to be adopted</i>). OSPI, however, does not believe the additional language suggested by the commenters is necessary to clarify if a complainant can use the state complaint</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
172A-05025 and mention an authorized contracted placement along with a school district, or if a complaint also needs to be filed using a separate process.	process under WAC 392-172A-05025 and mention an authorized contracted placement along with a school district because subsection (4) of the proposed rule already confirms that any authorized contracted placement "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." Thus, a separate complaint under RCW 28A.155.240 is not necessary for an investigation of an authorized contracted placement to be initiated.

C. Determining Eligibility for Students with Specific Learning Disabilities

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
1. One commenter mentioned some concerns about the phasing out of the severe discrepancy method because, in their observation over the years, most clients have relied on that method to identify specific learning disabilities. The concern is whether or not there are adequate safeguards in the proposed language to make sure that the process does not drag out if schools are relying on response to intervention.	OSPI's proposed rules are intended to specifically address the overreliance on the discrepancy model which contributes to delays in services, creates inequities, and does not reflect how students actually learn. The proposed rules are <i>additional</i> procedures to be used in situations where a specific learning disability is suspected as part of a standard comprehensive evaluation process under WAC 392-172A-03020. OSPI believes the existing rules in WAC Chapter 392-172A currently contain sufficient safeguards regarding the overall process of identifying students potentially eligible for special education services, including students with specific learning

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
	disabilities, and any concerns about school districts not following identification procedures and/or delays in the evaluation process can be resolved utilizing the Individuals with Disabilities Education Act (IDEA) and existing Washington state special education dispute resolution mechanisms.
2. Many of the commenters pointed out a discrepancy within the proposed rules between WAC 392-172A-03055 and WAC 392-172A-03080 regarding how school teams may consider patterns of strengths and weaknesses in determining eligibility for students with specific learning disabilities. Commenters suggested reverting back to the language within the existing rule to avoid potential confusion.	OSPI agrees with the comments received and the proposed rule to be adopted under WAC 392-172A-03080 has been updated to restore the previous language and eliminate any confusion or conflict with WAC 392-172A-03055 regarding the consideration of a pattern of strengths and weaknesses. <i>(See Section II above for the text of the final rule under WAC 392-172A-03080 to be adopted).</i>
3. Some commenters conveyed a lack of clarity regarding how school teams are allowed to consider patterns of strengths and weaknesses in determining eligibility for students with specific learning disabilities. One commenter expressed a fear that many districts will sidestep using multi-tiered systems of support (MTSS) and consider only patterns of strengths and weaknesses. Another commenter remarked that school psychologists will be forced into making eligibility decisions using a severe discrepancy model or a pattern of strengths and weaknesses in some areas, but MTSS data in other areas without any consequences to school districts for not fully implementing MTSS assessment and intervention procedures.	OSPI recognizes the concerns raised by commenters and the proposed rule to be adopted under WAC 392-172A-03055(2)(b) has been updated with additional language to clarify that any consideration of patterns of strengths and weaknesses must be done in conjunction with a student's response to scientific, research-based intervention data. <i>(See Section II above for the text of the final rule under WAC 392-172A-03055 to be adopted).</i> Existing OSPI guidance on the special education referral process explains how MTSS and RTI are a part of general education and pre-referral options and must not be used to delay or replace the special evaluation process. OSPI believes any other concerns about school districts not following identification procedures and/or delays in the evaluation process can be resolved utilizing existing IDEA and

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
	Washington state special education dispute resolution mechanisms.
<p>4. Multiple commenters expressed worry that with the proposed rule changes, many school districts are not ready to implement MTSS or any research-based interventions. Commenters asked questions about how OSPI will support the implementation and development of MTSS in particular at the secondary school level citing a lack of evidence-based intervention programs and research for secondary schools.</p>	<p>OSPI agrees with concerns raised about school districts not being ready to fully implement MTSS or a process based on a student's response to scientific research-based intervention. The proposed rule to be adopted under WAC 392-172A-03045 has been updated with additional language to support school districts with this transition. <i>(See Section II above for the text of the final rule under WAC 392-172A-03045 to be adopted)</i>. OSPI remains committed to partnering with various content area experts in providing all school districts with ongoing guidance and technical assistance on utilizing a student's response to scientific, research-based interventions within MTSS as part of the special education evaluation process. OSPI believes the proposed rules, taken together, are sufficient in clearly outlining consistent expectations for school districts regardless of age level and no additional changes are needed for specific grade levels.</p>
<p>5. Many commenters expressed appreciation for the proposed rules and the plan to sunset the use of the severe discrepancy methodology by the 2028-2029 school year. Commenters were looking forward to continued partnership with OSPI to answer questions about practice and implementation of the new regulations. One commenter noted that variability between school districts is not something new to the field given that school psychologists often face situations where the discrepancy levels of a transfer student did not</p>	<p>OSPI appreciates the feedback provided and looks forward to ongoing partnerships in support of the new rules.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
seem to mesh with the criteria for eligibility within their given school district.	
6. A few commenters raised questions about how district transitions to using a student's response to scientific, research-based interventions would have an impact on students enrolled by parents in private schools that may not be implementing MTSS.	While eligibility for special education services is determined solely by public school districts, private schools working with public school districts can certainly benefit, as needed, from the guidance and technical assistance provided by OSPI on determining eligibility for students with specific learning disabilities. OSPI believes no additional change to the rules in this respect is needed.
7. Some commenters raised questions about the need for model procedures for school districts to follow in support of the transition to using a student's response to scientific, research-based interventions. Commenters expressed concern about a wide variability between districts in implementing new procedures to support the identification of students using a response to scientific, research-based interventions process.	See response C-4 regarding modifications to the proposed rule under WAC 392-172A-03045 to support districts implementing new procedures. Additionally, OSPI is committed to continuing its work with partners such as the Washington State School Directors' Association (WSSDA) to support the development of model policies and procedures that school districts may adopt.
8. One commenter asked if the new proposed requirement of two or more intensive scientific research-based interventions under WAC 392-172A-03060(2)(b) applies to all of the academic areas listed in WAC 392-172A-03055(1) in order for teams to determine areas of need to be addressed in a student's IEP. Some commenters expressed doubts about whether school districts were even capable of providing at least two research-based interventions in all academic areas claiming that districts lack resources, materials, and training.	The requirement of "two or more intensive scientific research-based interventions" is not a new requirement being proposed as a part of this rulemaking. As currently stated under WAC 392-172A-03060(2)(b), the requirement applies to "interventions in the general education setting, in addition to or in place of the core curriculum" which is inclusive of the academic areas listed in WAC 392-172A-03055 and does not mandate that interventions must include all academic areas listed. OSPI believes the existing language in WAC 392-172A-03060(2)(b) is sufficient to address the commenter's concerns due to the lack of any kind of mandate in the rule and

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
	<p>because this subsection is not affected by the rules currently being proposed. OSPI is nonetheless committed to providing all school districts with ongoing guidance and technical assistance on using scientific research-based interventions within MTSS in advance of the new rules taking effect for the 2028-2029 school year. (See response C-4 regarding modifications to the proposed rules to support districts implementing response to scientific research-based procedures).</p>
<p>9. One commenter expressed concerns regarding the proposed mandatory shift to a response to intervention (RTI) framework for specific learning disability (SLD) identification. The commenter cited a lack of safeguards for students which increases the risk of the process becoming a “watch them fail” model; variability in eligibility determination between districts; concerns about transparency for family engagement defining how districts must share their MTSS/RTI processes with families and/or disclose when an intervention is intensified or changed; and concerns about how RTI is often used to deny or delay a special education evaluation with a particular impact on twice-exceptional students. The commenter suggested OSPI provide districts with the opportunity to develop the resources to implement RTI with fidelity across all grade levels and domains. The commenter stated that districts integrating a pattern of strengths and weakness must also include an assessment for cognitive processing as part of a comprehensive evaluation to understand why a student is struggling, not just that they are failing. The commenter also stated that families need to be provided with information</p>	<p>OSPI is committed to providing all school districts with guidance and partnering with content area experts to provide resources and technical assistance on determining eligibility for students with specific learning disabilities including secondary school and private school students. (See also, responses C-4 and C-6). OSPI believes the existing rules in WAC Chapter 392-172A presently contain sufficient safeguards regarding the overall process of identifying students potentially eligible for special education services, including students with specific learning disabilities and twice-exceptional students. Guidance currently available on the OSPI Special Education Policy Guidance and Resources webpage, specifically Technical Assistance Paper (TAP) #5 on Evaluation Procedures Under Part B of IDEA, describes the standard evaluation process. The proposed rules address the <i>additional</i> procedures to be used in situations where a specific learning disability is suspected as part of a comprehensive overall evaluation under WAC 392-172A-03020. Under this rule, school district evaluations must be</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>on implementation and decision-making through a district's MTSS program so that families can partner with schools meaningfully regarding the interventions.</p>	<p>"sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." The standard evaluation process for special education eligibility also requires school districts to inform parents about the assessments to be used as part of the evaluation process and to obtain parent consent before initiating an evaluation. Under existing rules, a student could not be identified as a student eligible for special education with a specific learning disability using a student's response to scientific, research-based interventions by the district without engaging with families in a comprehensive evaluation process. (See also, responses C-1 and C-3). OSPI believes any concerns about school districts not following proper identification procedures and/or delays in the process or any concerns about parents having the opportunity to be involved with the identification, evaluation, educational placement, and provision FAPE to students can be resolved utilizing existing IDEA and Washington state special education dispute resolution mechanisms.</p>
<p>10. Two commenters expressed opposition to the shift to an RTI framework as the exclusive method for SLD qualification, urging OSPI to adopt stronger rules to ensure districts evaluate for all suspected disabilities and provide evaluations sufficient to address all disability-related needs. Concerns were raised specifically about twice-exceptional students who have SLDs becoming further marginalized and denied services. While these students</p>	<p>School districts are required to follow the standard evaluation process for identifying students in need of special education and related services, including twice-exceptional students. (See response C-9). The current rules already state under WAC 392-172A-03020(2)(b) that school districts must "not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>could qualify in other categories, in practice, the commenter explained that districts often limit services to the qualifying categories which negatively impacts twice-exceptional students who also have an SLD by denying them access to specially designed academic instruction. The commenters proposed revisions to the proposed rules that (1) explicitly state that evaluation must identify all disability-related needs and provide specially designed instruction (SDI) to those areas; (2) prohibit the use of a single-metric for determining eligibility for services or denying a request for SDI; and (3) strengthen compliance with evaluation timelines and avoid delays.</p>	<p>services and for determining an appropriate educational program for the student.” The current rule also goes on to state under subsection (3)(g) that school district evaluations must be “sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.” Furthermore, WAC 392-172A-01035(1)(e) also states that “special education services may not be solely based on the disability category for which the student is eligible.” OSPI believes the current rules are sufficient and that further revisions are not needed. Any concerns about school districts not following proper procedures or the provision of services can be resolved under the IDEA and existing Washington state special education dispute resolution mechanisms.</p>
<p>11. One commenter expressed the need for a backup option for identifying students with SLDs because the process can overlook the needs of students who are twice exceptional whose strengths mask their deficits. The commenter was concerned that, without a backup option, districts could become even more of a gatekeeper to get a student identified and supported for their SLD.</p>	<p>See responses C-1, C-9, and C-10.</p>
<p>12. One group of commenters expressed significant reservations about the proposed changes. This group pointed out potential problems with the uniformity of implementation; the lack of science-based materials for some types of SLDs; the lack of fidelity by school districts to science-backed programs for SLDs; the unavailability of</p>	<p>See responses C-5 and C-7 regarding the uniformity of implementation and the development of model procedures. See responses C-4 and C-8 regarding partnerships with content area specialists in providing guidance and support for districts during the two-year transition to the rules taking effect in 2028-2029. The current</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
science-backed materials for older students; the need for districts to be required to provide clear information about their evaluation procedures for SLDs at the time consent is requested; and a requirement that any use of MTSS/RTI must be accompanied by a written explanation to parents as to whether it is part of an evaluation process or if it is being used as part of general education instruction.	rules already require districts to provide information about evaluation procedures to parents prior to initiating an evaluation (see, WAC 392-172A-01040; WAC 392-172A-03000; WAC 392-172A-05010). OSPI also believes the existing rules in WAC Chapter 392-172A contain sufficient safeguards regarding the overall process of identifying students potentially eligible for special education services and that additional revisions to the proposed rules in this regard are not needed.
13. One group of commenters requests that the proposed changes strengthen family participation and protect the needs of twice-exceptional students. The commenters stated that RTI should not be used to delay or deny an evaluation, and that the lack of prior intervention data should not prevent an evaluation when a disability is suspected. The commenters believe that districts should consider patterns of strengths and weaknesses; factors such as compensatory effort, school avoidance, emotional distress, and the mental health cost of masking needs; and that eligibility categories should not be used to limit access to SDI in other areas of need.	See responses C-1, C-3, C-9, and C-10.

D. Updates to Existing Requirements for the Provision of FAPE

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
Behavioral Supports	
1. One group of commenters expressed enthusiasm for the proposed rule changes transitioning from "emergency response protocol" to "crisis de-escalation and safety	OSPI appreciates the feedback provided and agrees with the commenters' suggestion. The proposed rule to be adopted under WAC 392-172A-02105 has been updated to

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>plan.” The group suggested that the name of the new plan should be changed to something like “crisis deescalation and safety protocol” or other title that does not include the phrase “safety plan” because safety plan commonly means another kind of plan in the school environment.</p>	<p>“crisis de-escalation and safety <u>protocol</u>” to avoid any potential confusion within the general school environment as well as maintain some continuity with the prior rule language. <i>(See Section II above for the text of the final rule under WAC 392-172A-02105 to be adopted).</i></p>
<p>2. One commenter expressed the need for guidance on the crisis de-escalation and safety plans which will replace emergency response protocols, stating that sample documents and model forms would be helpful to look at if OSPI has had a chance to create them. Additionally, the commenter expressed concern about the requirement to have a licensed health care provider deem it medically necessary to restrain a student. The commenter speculated as to the types of situations where restraint would be medically necessary, and when imminent harm is reached, finding it difficult to imagine a medical provider who would say that it is medically necessary to restrain a student who, for example, is impulsive and might run into the street, even though it would not be a medically necessary situation. This requirement could create risk for students when there are no current risks and further confusion as to when an imminent likelihood of serious harm exists. The commenter requested removing the medically necessary requirement from crisis de-escalation and safety protocol and expressed support for requiring parents to request and to be involved in the discussion of the plan.</p>	<p>OSPI believes the proposed rule reflects the requirements of RCW 28A.600.485 and cannot change the language of that law through the rulemaking process. The commenter’s request requires legislative action. The proposed rule, as written, does require parent involvement in the creation of any crisis de-escalation and safety protocol as requested by the commenter. No further changes to the rule are needed. OSPI is also committed to providing guidance, creating model forms, and supplying ongoing technical assistance to the field on this important subject.</p>
<p>3. One commenter also expressed concern about legal changes to RCW 28A.600.485 and 28A.600.486 that prohibit the creating or remodeling spaces used for student isolation</p>	<p>OSPI does not have the authority to change the language of RCW 28A.600.485 and/or RCW 28A.600.486 through the rulemaking process. OSPI, however, remains committed</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>as well as the legislature’s purported plan to make any use of isolation, and possibly restraint, illegal in about 5 years. The commenter stated that while this is not something that anyone would enjoy doing, they acknowledged that there are situations where isolation and restraint is critically necessary for students’ safety and the types of students that they serve in their program, especially because they are one of very few programs that serve these types of kids in state besides a long-term inpatient psychiatric facility. The commenter explained that if isolation and restraint were to become illegal, many students would be sent out of state to places with no meaningful oversight of restraint and isolation practices; OSPI oversight of these students would be minimal with less meaningful outcomes; the students would receive poorer care including a lack of meaningful collaboration with parents; and the results of this plan would be at an overall greater expense for public health and the public education system. The commenter urged continuing to allow the use of isolation and restraint as long as the laws make clear, as they currently do, the need to keep students safe, maintain their ability to breathe, and to hold personnel and programs responsible for abuse of this authority.</p>	<p>to providing guidance and ongoing technical assistance to the field on this important subject.</p>
<p>4. One organization expressed appreciation for adding de-escalation strategies to the proposed rule under WAC 392-172A-02105. The commenter recommended further requiring what proactive supports are being put into place to work with the student to identify and resolve what is causing unsafe behavior. The commenter also suggested adding clear language that parents should not</p>	<p>See response D-5 regarding revisions to the proposed rule in line with the commenter’s recommendations. Parent consent to any advanced education planning, however, is required under RCW 28A.600.485 and OSPI cannot change the language of that law through the rulemaking process. OSPI, on the other hand, is committed to providing guidance and ongoing technical assistance</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>be asked to consent to isolation or restraint. The commenter requested that OSPI create plain language guidance for school staff and the community explaining when these plans are (and are not) appropriate, and what their narrow use is for. The commenter explained that these plans are confusing to parents and mislead them into thinking they must sanction isolation and restraint and believe they are overused and issued in a biased way.</p>	<p>to the field on this important subject as suggested by the commenter.</p>
<p>5. One group of commenters expressed support for OSPI’s intent to strengthen accountability and protect students through the proposed rules under WAC 392-172A-02105. The group recommended that the final rules and accompanying guidance help districts move beyond procedural compliance alone and toward consistent implementation that centers prevention, student voice, family partnership, root-cause analysis, relational safety, and adult/system change; that these rules should help schools understand why crisis occurs, prevent harm before it happens, repair trust when harm has occurred, and build systems where all students, especially those most impacted by ableism, racism, restraint, isolation, and exclusion, can learn, belong, and thrive. The group of commenters suggested (1) a focus on prevention and support tools and that isolation should not be included as a planned intervention; (2) that OSPI clarify that these plans should include student voice and meaningful family participation as the default expectation; and (3) that OSPI require monitoring and corrective action for disproportionality by race, disability category, language access needs, gender, placement setting, and school site with corrective actions</p>	<p>OSPI agrees with the sentiments expressed by the commenters. Subsection (1) the proposed rule under WAC 392-172A-02105 has been revised to state that crisis de-escalation and safety protocol <u>“may include, but do not require, the use of restraint”</u> so that IEP teams may consider the need for such advanced educational planning with a focus on prevention and support, not necessarily for the purposes of carrying out physical interventions. Likewise, the proposed rule already contained a requirement for IEP teams to develop a behavioral intervention plan as defined under WAC 392-172A-01031 <i>prior to</i> the development of any crisis de-escalation and safety protocol. OSPI also added subsection (1)(f) to the rule as a specific prohibition on the use of isolation as a planned behavioral intervention within any crisis de-escalation and safety protocol. <i>(See Section II above for the text of the final rule under WAC 392-172A-02105 to be adopted)</i>. OSPI believes that the existing rules within WAC Chapter 392-172A contain sufficient safeguards for maintaining student voice and parent participation throughout the process of developing an IEP. OSPI will also continue to track district practices and monitor outcomes</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
focused on prevention, belonging, family partnership, and reducing restrictive practices.	through its ongoing Program Improvement activities. No further revisions to the proposed rules in these areas are needed.
6. One group of commenters endorsed the proposed changes to WAC 392-172A-02110 and recommended including additional language to (1) prohibit mechanical, chemical, or physical restraints that is life-threatening, restricts breathing, or restricts blood flow to the brain, including prone, supine, and wall restraints; (2) prohibit the design, construction, remodel, reconfiguring or repurposing of any new room or area for isolation; (3) reflects isolation may not be used as a planned behavior intervention; (4) reflects new conditions around restraint use as a planned behavior intervention, and (5) reflect that school resource officer incidents must be included in reporting requirements under subsection (3).	OSPI appreciates the feedback provided. Most of the commenters' recommendations are either prohibited under WAC 392-172A-02076 and RCW 28A.600.485 as referenced in the proposed rule or already included in the current rule by reference to RCW 28A.600.485, as amended. OSPI, however, agrees with the commenters' third recommendation and included this prohibition in a new section under WAC 392-172A-02105. <i>(See Section II above for the text of the final rule under WAC 392-172A-02105 to be adopted).</i>
7. Multiple commenters appreciated the addition of "deprivation of communication" to the list of banned practices under WAC 392-172A-02076	OSPI appreciates the feedback provided.
8. One group of commenters recommended: <ul style="list-style-type: none"> • Striking out the language "except under the conditions set forth in WAC 392-178A-02110" from WAC 392-172A-02076(2)(j) because binding a student's body would constitute mechanical restraint and should be prohibited. • Adding the language "any restraint or escort that is life threatening or interferes with breathing or blood flow" to WAC 392-172A-02076(2)(k). • Adding language to WAC 392-172A-02076 that prohibits mechanical, chemical, and life-threatening restraints. 	OSPI agrees with the commenters' first three recommendations. <i>(See Section II above for the text of the final rule under WAC 392-172A-02076 to be adopted).</i> Additional revisions to this rule based on the last three recommendations are not needed. The prohibition on the design, construction, remodel, reconfiguring or repurposing of any new room or area for isolation is already incorporated into the rule by references to the conditions and limitations on the practice of isolation under WAC 392-172A-02110 and RCW 28A.600.485. OSPI has also already added language to reflect that

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<ul style="list-style-type: none"> • Adding language that prohibits the design, construction, remodel, reconfiguring or repurposing of any new room or area for isolation. • Adding add language to reflect isolation may not be used as a planned behavior intervention • Add language to reflect isolation must not be used to address a student's self-harm behavior consistent with OSPI-proposed rulemaking language under WAC 392-172A-02110(1)(g). 	<p>isolation may not be used as a planned behavior intervention to WAC 392-172A-02105. (See response D-5). And, OSPI believes the existing language under subsection (2)(f) directly referencing the conditions and limitations set forth in WAC 392-172A-02110 is sufficient to ensure consistency between the two rules regarding any potential use of isolation to address a student's self-harm behaviors.</p>
<p>9. One commenter expressed support for the proposed rules regarding behavioral supports, particularly the proposed new definitions for the behavior intervention plan and the functional behavior assessment. The commenter felt that it would help to have some science-based language in the rules.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>10. One organization supported keeping the existing rule defining a behavioral intervention plan (BIP) until OSPI was able to conduct more extensive and authentic community engagement on the topic. The commenter stated that the proposed rule seemed to be very directive to a specific approach of behavior management and out of sync with the neuroscience informed approaches that underpin the work of OSPI's Inclusionary Practices Technical Assistance Network (IPTN) and the Reducing Restraint & Eliminating Isolation (RREI) Project. The commenter also included numerous specific concerns with the proposed BIP definition, citing an overemphasis within the rule on student response and not student needs. The commenter felt that, as written, the BIP definition could lead staff to make harmful assumptions about why a behavior might be</p>	<p>OSPI agrees with the feedback provided and has withdrawn the proposed rule. The current rule under WAC 392-172A-01031 defining a behavioral intervention plan will remain unchanged. <i>(See Section II above confirming that the proposed rule under WAC 392-172A-01031 has been withdrawn).</i></p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
occurring (such as to “get attention”) and direct them away from the foundational, proactive work that needs to occur to resolve problems and support skill development.	
11. One group of commenters provided extensive comments on the proposed changes to the definition of a BIP under WAC 392-172A-01031. Some comments offered support for the intended direction of changes, however, offered additional suggested language to specify how student data will be collected, the staff who will be collecting the data, the specific types of data that will be collected, the frequency of data collection, and how often the data will be reported to the parent. Commenters called for greater accountability within the rule for not following the behavioral intervention plan and prohibitions on the use of other measures, such as restraints or calls to emergency personnel (i.e., 911 or school safety officers).	See response D-10.
12. One organization provided extensive comments on the proposed new rule WAC 392-172A-01088 defining a functional behavioral assessment (FBA). The commenter pointed out that there is no mention of relationships or emotional safety. The commenter was concerned that the FBA definition does not mention identifying possible root causes, environmental factors or skill data or skill gaps in data gathering; that it does not mention gathering information from the student about the behavior and there's no mention of the nervous system and its response to safety or threat. The commenter shared that according to research in this area, when these elements are not met, educators risk reinforcing a biased, reactive, deficit-based mindset rather than proactive, solution-	OSPI agrees with the feedback provided and has withdrawn the proposed new rule WAC 392-172A-01088 in light of all the various comments received related to behavioral supports for students receiving special education services. <i>(See Section II above confirming that the proposed new rule under WAC 392-172A-01088 has been withdrawn).</i>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>focused work. The commenter felt the proposed new rule is very directive basically towards an Applied Behavioral Analysis (ABA) swapping approach that may not be appropriate for a lot of students. A little bit more authentic community engagement would be helpful.</p>	
<p>13. A group of commenters expressed support for the proposed new rule WAC 392-172A-01088 defining an FBA. The commenters would like to see acknowledgement that an FBA is a type of evaluation requiring parental consent as described in WAC 392-172A-01040. The commenters also proposed an additional subsections to the rule to require at least two observations of the student's behavior across at least two distinct settings (if the student accesses at least two distinct settings in a typical school day); requiring a description of the student's disability, how the disability manifests in the student, and how the student's targeted behaviors are connected to or related to the student's disabilities; and training/certification requirements for who may design and coordinate the FBA, specifying that it should not be the student's regular classroom teacher(s).</p>	<p>See response D-12.</p>
<p>14. One commenter shared concerns about both the proposed changes to the BIP definition and the new proposed FBA definition. The commenter explained that the definitions, as written, may systematically exclude students with internalized behavioral presentations from accessing FBAs and BIPs, harming the very students who may need them because they do not present in a way that fits what is observable and expected. The commenter also shared a detailed personal example.</p>	<p>See responses D-10 and D-12.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>15. One organization expressed appreciation for the effort to propose new BIP and FBA language but was concerned that the proposed language may be interpreted as emphasizing observable behavior, replacement behavior, and behavior reduction without sufficiently requiring teams to understand underlying needs, environmental conditions, emotional safety, relational safety, and adult/system contributions. The organization recommended revising the proposed rules to require student voice as the default expectation and affirm greater family involvement. The organization emphasized that IEP teams must use developmentally appropriate, culturally responsive, and accessible methods to understand the student's experience, preferences, needs, and sense of safety, along with family and caregiver knowledge, communication needs, sensory needs, internalized distress, masking, school avoidance, relationship and emotional safety, environmental conditions, adult response patterns, root causes, proactive supports, repair after harm, and strategies to reduce the need for restraint, isolation, removal, or exclusion. The organization also concluded that the proposed rules needed better alignment with OSPI's broader inclusionary practices work.</p>	<p>See responses D-10 and D-12.</p>
Referral and Evaluation Timelines	
<p>16. Numerous commenters expressed some confusion about the proposed rule under WAC 392-172A-03015 and its reference to the definition of an evaluation report under WAC 392-172A-03035. Commenters noted the differences in the definition of an evaluation report under ESHB 2557 and the definition under WAC 392-172A-03035. Commenters</p>	<p>OSPI believes the two definitions of an evaluation report are functionally equivalent and are not incompatible. The proposed language regarding a "draft copy of the evaluation report" in WAC 392-172A-03015 is necessary precisely to avoid confusion and minimize the possibility of predetermination by a school district. By specifying that the</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>claim these two definitions seem quite different, with the second being highly vulnerable to pre-determination of decisions that are lawfully and rightfully made by the team at the eligibility determination meeting. Commenters also pointed out that ESHB 2557 specifically did not use the word “draft” and instead referred to a complete set of materials. Based on the commenters’ experiences, information is routinely added to an evaluation report after the draft is provided to parents. The commenters suggested that the final rule change maintain the definition of evaluation from ESHB 2557 and exclude the word “draft.”</p>	<p>advance copy of the evaluation report is a “draft,” the rule ensures that despite providing the evaluation report in advance, the eligibility determination is not finalized until the team meets with the parent, whereas the parent has a full opportunity to ask questions, raise concerns, and provide input as intended by ESHB 2557 (2026) (codified under RCW 28A.155.265). OSPI has addressed the commenters’ concerns in its current guidance under Questions B3 and B4: ESHB 2557 — Evaluation & Eligibility Determination Timelines Q&A. This guidance explains that school districts are specifically <i>not</i> procedurally prohibited from considering additional information after providing parents with a “completed draft copy of the evaluation report.” OSPI also remains committed to ongoing guidance and technical assistance to the field in the future regarding these distinctions and other unanswered questions.</p>
<p>17. Numerous commenters also had unanswered questions about providing an advance copy of the evaluation report, including what the procedure is if new information (e.g. medical documentation, the completion of rating scales) is provided by the family or teachers after the advance copy is provided to the family. Commenters believed that they are procedurally prohibited from considering additional information after the advance copy is provided. One commenter wondered if there would be an option to amend the evaluation to include information provided and received after the evaluation was sent out.</p>	<p>OSPI has addressed this concern under Question B4 of current guidance: ESHB 2557 — Evaluation & Eligibility Determination Timelines Q&A. This guidance explains the reasons why school districts are specifically <i>not</i> procedurally prohibited from considering additional information after providing parents with a “completed draft copy of the evaluation report.”</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>18. One commenter wanted to highlight how incredibly biased ESHB 2557 is for families who are not literate in English. The commenter felt that the time requirements and expense of translation was not considered and is not supported for districts, sharing a specific example from their practice where it took over a week to get a one-page letter translated at significant cost to the district. The commenter opined that it would take exponentially longer to have a 20-plus page, highly technical document translated and have exponential (unsupported) cost associated with it. The commenter claimed there is not enough time in the evaluation timelines, even if there were funding available, to produce this level of translation within the existing timelines. The commenter stated that ESHB 2557 is biased to its core and reinforces a system that is already built to disenfranchise those furthest from educational justice. The commenter expressed hope that before any other law changes happen (like the reduction of days of the referral window), that some data about the impacts of this biased and racist bill on family engagement and participation is collected. The commenter recognized that OSPI has to adapt in response to ESHB 2557 related changes and that law changes need to go through the legislature. The commenter asked for OSPI to actively work to produce anti-racist structures and systems.</p>	<p>OSPI appreciates the feedback provided regarding the impact of ESHB 2557 on multilingual families. Although evaluation reports are not required to be translated documents under the rules for the provision of special education, WAC 392-172A-05001 continues to outline the requirements for school districts to “take whatever action is necessary to ensure that the parent understands the proceedings” of a meeting. The current rules under WAC 392-172A-03005 and WAC 392-172A-03015 also do not disrupt the current practice of allowing the parent and school district to extend timelines as needed to account for translation services. OSPI believes no further changes in the context of the proposed rules for referral and evaluation timelines are necessary.</p>
<p>19. One commenter shared a deep belief in improving family partnership and increasing family access to information. The commenter stated that heart of ESHB 2557 was something they fought for in professional roles and desire to have families as prepared as possible ahead of meetings so they can participate as team</p>	<p>See response D-18.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>members. The commenter also shared concerns that ESHB 2557 will not address that problem for all families and will take away valuable capacity of all districts to conduct proper comprehensive evaluations. The commenters shared that sending requests for translation of special education documents off to outside agencies for languages was prohibitively expensive and could take 1-3 weeks, or more depending on the length, and still the product contained errors and needed verbal interpretation aided by a conversation to explain the concepts contained within the IEP or evaluation. The commenter stated that poor quality translations from Google Translate or other AI systems are not sufficient in providing equal access to information that English-speaking families will receive and shared fears that this rushed change may create another inequity and cause unnecessary stress.</p>	
<p>20. One commenter explained that the proposed rule changes pertaining to ESHB 2557 refer to an existing WAC that defines evaluation reports in a way that would make them vulnerable to predetermination, and advocates that the proposed rule language be consistent with the bill language. The commenter pointed out that decisions about eligibility happen with parents at an eligibility meeting, not by a group of educators in isolation of parents. The commenter pointed out that the word "draft" is used in the proposed rules and that parents were very clear in advocating for ESHB 2557 that they do not want drafts that can then further be updated with information they did not have without that advance notice. The commenter was looking forward to continued partnership</p>	<p>See response D-16.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
with OSPI to answer questions about practice and implementation of the new regulations.	
21. One commenter requested further clarification in the proposed changes relating to ESHB 2557 about the evaluation report and what constitutes a draft copy. The commenter felt the rule was getting really close to the idea of predetermination. The commenter shared that there continues to be some unanswered questions with the new regulation for an advance copy, including what the procedures are, if new information is provided by the family or teachers after the advance copy is provided to the family.	See response D-16.
22. One commenter expressed the need for stronger rules to ensure districts evaluate for all suspected disabilities and provide evaluations sufficient to address all disability-related needs, especially for highly capable but disabled students (twice-exceptional) who are at high risk for mental health deterioration, inability to attend school, and suicidal ideation. concerns about the evaluation parameter changes. The commenter explained that, in their experience during evaluation meetings, districts have predetermined the students' needs and drafted evaluations disregarding parents' input. The commenter felt that providing parents with the evaluation document a few days in advance of the eligibility determination meeting is literally the very least the district could do to actually encourage parent participation in the eligibility decision making. The commenter believes most districts actively discourage parent participation and circumvent any attempts to be a part of the determination of services for their child. The commenter believes that the only way to change this	Under the current rules for the provision of special education services, districts must complete a "sufficiently comprehensive evaluation to identify all of the student's special education and related services needs." (WAC 392-172A-03020(3)(g)). The current rules further state that the provision of services "may not be solely based on the disability category for which the student is eligible." (WAC 392-172A-01035(1)(e)). OSPI believes the rules for the provision of special education services contain sufficient procedural safeguards throughout all aspects of the process to ensure that parents have the opportunity to be involved with the identification, evaluation, educational placement, and provision of free appropriate public education (FAPE) to students. No further changes to the proposed rules beyond what is required by ESHB 2557 (2026) (codified under RCW 28A.155.265) are necessary to address the commenter's concerns. Any concerns about school districts not following evaluation procedures, parent participation, and/or the provision of

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
dynamic is to have the evaluation process be implemented quickly and that changing the time period between when the parents asks for an evaluation and when the district initiates an evaluation from 25 days to 20 days will not be impactful, because by the time the parent has asked, everyone knows that there is a problem. The commenter called for strengthening timeline compliance by imposing strict corrective actions for districts that utilize evaluation delays to circumvent the provision of free appropriate public education (FAPE).	special education services can be resolved under the IDEA and existing Washington state special education dispute resolution mechanisms.
23. One organization expressed support for the shift in referral and evaluation timelines and the additional accountability for districts.	OSPI appreciates the feedback provided.
24. One commenter opposed the possible change of 25 school days to 20 school days to make a decision about evaluating a student after receiving a referral. The commenter pointed out that current OSPI guidance suggests that it is not appropriate after receiving a referral to say that a district needs to implement interventions. The commenter explained that districts sometimes receive referrals for students who are not on their radar, who may actually need interventions, and it is helpful to have those 25 school days, pointing out that 25 school days is already shorter than what is required under IDEA.	Prior OSPI guidance on the special education referral process indeed explains that the referral time period is intended as an information gathering and decision-making phase and not a continuation of pre-referral intervention. If district teams legitimately determine that an evaluation is not warranted, then the current rule under WAC 392-172A-03005 explains how districts can communicate this decision to parents using prior written notice. OSPI believes no change to the proposed rule is necessary and remains committed to ongoing guidance and technical assistance to the field on this topic.
25. One commenter opposed the change to the special education referral timeline. The commenter stated that reducing the referral timeline to 20 school days was not in the final legislative bill report to ESHB 2557 or session law; only the increase in evaluation reporting time to accommodate the 5 school day report	The IDEA requires that an initial evaluation be completed "within 60 [calendar] days of receiving parental consent for evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe." (CFR § 300.301(c)(1)). The proposed rule ensures that Washington

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>review period for parents. The commenter pointed out that the federal 60 day timeline is for the evaluation process after signed consent is received and that the referral timeline cannot be part of this since consent is requested only once a referral is responded to by the district.</p>	<p>will continue to operate within a more comprehensive 60 <i>school</i> day timeline, from the time of referral through eligibility determination, previously approved by the US Department of Education Office of Special Education Programs (OSEP). In order to account for the 5 day waiting period between the report and the meeting required by ESHB 2557, OSPI's proposed rule is adjusting the referral period from 25 days to 20. This change will keep the process within the required federal timelines and existing state timelines, while not reducing the overall time to complete an evaluation. OSPI believes no change to the proposed rule is necessary.</p>
<p>26. One commenter expressed support for ESHB 2557 but opposed shortening the referral timeline as a deeply flawed idea and completely unnecessary. The commenter shared that they have had considerable difficulty meeting the 25 school day timeline due to the volume of referrals received throughout the school year, limiting the time spent with parents addressing concerns and explaining the process. The commenter explained that a written referral leads to a Child Find meeting where teams must make fully informed decisions whether or not to evaluate, and also to plan out an appropriate and comprehensive evaluation. The commenter further explained that the reality is that staff are already heavily booked with other meetings throughout the week, and that many work in multiple buildings making it difficult to attend meetings when working in or attending meetings at other work sites. The commenter questioned why the timeline needs to be shortened when federal law only</p>	<p>See responses D-24 and D-25.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
requires a 60 day timeline for the evaluation process.	
<p>27. One commenter expressed significant concerns regarding the reduction of referral timeline from 25 school days to 20 school days. The commenter claims that changing requirements for referral and evaluation processes with no changes to funding and staffing is not in the best interest of students/families, and is not feasible for schools, and does not address the core issue of schools not maintaining compliance with these timelines. The commenter is concerned that with a rushed timeline, districts will be incentivized to simply send notices indicating a refusal or proposal to initiate an evaluation, without clear discussion about suspected disabilities and areas of suspected need for specially designed instruction. The commenter provided detailed scheduling constraints that would result from reducing the timeline to 20 school days and explained that every referral will have to have every step executed immediately with no buffer room. The commenter questioned how the 60 day evaluation timeline under federal law fits with the state referral process.</p>	See responses D-24 and D-25.
<p>28. One organization commented with recommendations for OSPI to ensure evaluation changes strengthen family participation and protect students whose needs are masked. The commenter supports timely access to evaluation information and reduced delays in the referral and evaluation process. The commenter further recommended that OSPI clarify that draft evaluation reports must be provided early enough for families to review, ask questions, seek support, and provide meaningful input</p>	<p>OSPI appreciates the feedback provided and has addressed concerns about the draft evaluation report and parent participation in the evaluation process in its current guidance on ESHB 2557 — Evaluation & Eligibility Determination Timelines Q&A. OSPI believes no changes to the proposed rules are necessary and remains committed to providing ongoing technical assistance in this area.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<p>before eligibility and service decisions are treated as final. The commenter stated that evaluation meetings should not feel predetermined by district-created recommendations or draft service plans. The commenter hoped that OSPI guidance would clarify that districts must consider parent concerns, outside evaluations, family-provided data, and the student's lived experience.</p>	
<p>29. One group of commenters expressed appreciation for the change to the evaluation timelines which decreases the number of days that a district has to respond to a request for an initial evaluation to 20 days, essentially creating a similar timeline for evaluation as previously existed. The commenters responded to the objections put forth by some school district personnel by explaining that that a draft evaluation is just that, a draft evaluation, and that requests for draft evaluations are routinely made in practice so that there is an opportunity to discuss assessment results with parents prior to the evaluation meeting. The commenters thought that additional language should be added to the proposed rule that prohibits districts from asking parents or guardians to sign that they agree with the evaluation report. The commenters explained that the law currently requires that only the professional members of the evaluation team document the agreement of professional members of an IEP team. However, many school districts routinely request parents to sign that they agree with an evaluation as a condition for developing an IEP, possibly leading to disputes over a parent's ability to later request an independent educational evaluation and</p>	<p>OSPI appreciates the feedback provided supporting the proposed change to the referral timeline. The commenters additional suggested language would expand the scope of this rulemaking and is already sufficiently addressed under the current rules for the provision of special education services. A parent signature on an evaluation report is not required under WAC 392-172A-03035. Furthermore, a parent's right to request an independent educational evaluation under WAC 392-172A-05005 is not predicated on whether a parent's signature indicates that they agree with an evaluation. Districts may request that parents provide a signature on an attendance sheet indicating that the parent participated in an eligibility meeting, but a signature is not required. Districts, however, may not condition the receipt of services on a parent providing a signature. OSPI believes no change to the proposed rule is necessary and that any concerns about school districts not following evaluation procedures, parent participation, and/or the provision of special education services can be resolved under the IDEA and existing Washington state special education dispute resolution mechanisms.</p>

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
withholding necessary services until such waiver is given.	
Dispute Resolution	
30. One group of commenters appreciated the inclusion of the language in WAC 392-172A-05025 regarding the addition of the Washington School for the Blind and the Washington School for the Deaf to complaint procedures because they had worked with families who did not know that they could file complaints against these entities.	OSPI appreciates the feedback provided.
31. A group of commenters expressed appreciation for the changes made to WAC 392-172A-05030(3) regarding complaint investigations and decisions in order to ensure that the complainant receives a copy of any documentation provided to OSPI as well as the school district or agency's written response to a complaint. The group recommended adding additional language to subsection (5): "If, before the OSPI issues a decision, the school district or agency provides additional information, either orally or in writing, that is not contained in the response to the complaint, the OSPI will notify the complainant prior to finalizing the written decision. The OSPI shall also notify the complainant of information provided during any independent on-site investigation by the OSPI." The commenters also recommend adding a new subsection to rule that states: "Following a decision, the OSPI will provide the complainant with all copies of documentation related to the completion of any corrective action plan that has been submitted by a school district." The commenters have found that families often feel confused by the state community complaint investigation process and are unsure of what is happening. The	OSPI appreciates the feedback provided on the proposed rule. OSPI believes, however, that the additional language suggested by the commenters falls outside the scope of this rulemaking and OSPI declines to go beyond the stated intent of the Notice of Proposed Rulemaking (CR-102). OSPI is not permitted to adopt a rule that is substantially different from the rule proposed in the published notice. (RCW 34.05.340). OSPI also recognizes the importance of transparency throughout the state community complaint process and would like to note that information sharing is already currently a standard part of complaint investigation procedures.

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
commenters have observed that both families and advocates have lost trust in the process upon learning for the first time after the issuance of a decision, that inaccurate information was shared with OSPI during an investigation. The commenters believed that increasing transparency in the process will improve both understanding and trust among complainants in the process.	

E. Correcting Outdated Information

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
1. One group of commenters stated that the proposed update to WAC 392-172A-02005 removing the Department of Corrections as a supervising agency was a positive revision. The group strongly believed that youth ages 18-22 should receive FAPE regardless of when or how they were identified for special education services.	OSPI appreciates the feedback provided.

F. Other General Comments

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
1. One group of commenters submitted a series of comments suggesting changes to the following rules: <ul style="list-style-type: none"> WAC 392-172A-01030 Assistive technology service. WAC 392-172A-01040 Consent. WAC 392-172A-01050 Day—Business day—School day. WAC 392-172A-02040 Child Find. 	These comments fall outside the scope of this rulemaking and OSPI declines to go beyond the stated intent of the Notice of Proposed Rulemaking (CR-102). OSPI is not permitted to adopt a rule that is substantially different from the rule proposed in the published notice. (RCW 34.05.340).

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
<ul style="list-style-type: none"> • WAC 392-172A-02090 Personnel qualifications. • WAC 392-172A-03090 Definition of individualized education program. • WAC 392-172A-05001 Parent participation in meetings. • WAC 392-172A-05010 Prior notice and contents. • WAC 392-172A-05020 Electronic mail. • WAC 392-172A-05146 Manifestation determination. • WAC 392-172A-05147 Conduct is a manifestation of student's disability. • WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. • WAC 392-172A-05200 Records on more than one student. • WAC 392-172A-05210 Fees. • WAC 392-172A-07040 Significant disproportionality. • WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education services. 	

G. Safety Net Funding – WAC 392-140-600 through 392-140-685

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
No comments were received about the proposed rules pertaining to WAC 392-140-600 through 392-140-685.	