



# RULE-MAKING ORDER

## PERMANENT RULE ONLY

**CR-103P (December 2017)**  
**(Implements RCW 34.05.360)**

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 14, 2026  
TIME: 8:11 AM

**WSR 26-21-034**

**Agency:** Office of Superintendent of Public Instruction (OSPI)

**Effective date of rule:**

**Permanent Rules**

- ☒ 31 days after filing.
- ☒ Other (specify) Except for the following, which are effective on August 1, 2028: WAC 392-172A-03045, 392-172A-03050, 392-172A-03055, 392-172A-03060, 392-172A-03065, 392-172A-03070, and 392-172A-03080. (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** This rulemaking seeks to amend, add new, and repeal sections under the Washington Administrative Code (WAC) Chapter 392-172A, Rules for the Provision of Special Education, and to amend and repeal sections of WAC 392-140-600 through 392-140-685 concerning State Special Education Safety Net Funding. OSPI has the authority under state statute to develop administrative rules to implement federal statutes and state regulations governing special education services to students. These changes are necessary to (1) address changes to the age of eligibility in accordance with Substitute Senate Bill (SSB) 5253 (2025); (2) address changes to the administration of students eligible for special education services placed in private settings or public educational service district settings by public school districts in accordance with Engrossed Second Substitute Senate Bill (E2SSB) 5315 (2023); (3) phase out the use of the severe discrepancy methodology and clarify existing procedural requirements for determining eligibility for students with specific learning disabilities; (4) update and clarify existing requirements under current state law regarding safety net awards (WAC 392-140-600 through 392-140-685), personnel qualifications, dispute resolution, referral/evaluation timelines, and behavioral supports applicable to the provision of free appropriate public education (FAPE) to students eligible for special education services; and (5) make changes and corrections to outdated language and references to other applicable sections of the Revised Code of Washington (RCW) and Washington Administrative Code (WAC).

**Citation of rules affected by this order:**

New: WAC 392-172A-01088 (proposed rule language withdrawn)

Repealed: WAC 392-140-60110, 392-140-617, 392-172A-01163, 392-172A-03065, 392-172A-03070

Amended: WAC 392-140-605, 392-140-608, 392-140-609, 392-140-616, 392-140-626, 392-140-643, 392-140-646, 392-140-675, 392-140-685, 392-172A-01010, 392-172A-01031 (proposed rule language withdrawn), 392-172A-01035, 392-172A-01040, 392-172A-01092, 392-172A-01107, 392-172A-01109, 392-172A-01135, 392-172A-01142, 392-172A-01155, 392-172A-01162, 392-172A-01190, 392-172A-02000, 392-172A-02005, 392-172A-02055, 392-172A-02060, 392-172A-02076, 392-172A-02080, 392-172A-02090, 392-172A-02105, 392-172A-02110, 392-172A-03005, 392-172A-03015, 392-172A-03035, 392-172A-03045, 392-172A-03050, 392-172A-03055, 392-172A-03060, 392-172A-03080, 392-172A-03090, 392-172A-03100, 392-172A-03105, 392-172A-04015, 392-172A-04080, 392-172A-04085, 392-172A-04090, 392-172A-04095, 392-172A-04100, 392-172A-04105, 392-172A-04110, 392-172A-05001, 392-172A-05010, 392-172A-05015, 392-172A-05025, 392-172A-05030, 392-172A-05085, 392-172A-05125, 392-172A-05135, 392-172A-05145, 392-172A-05190, 392-172A-05220, 392-172A-05235, 392-172A-07035

Suspended:

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

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 26-09-120 on April 21, 2026 (date).

Describe any changes other than editing from proposed to adopted version:

- WAC 392-172A-01031 Behavioral intervention plan. – Proposed rule amendments have been withdrawn in response to public comments; the existing rule will remain unchanged.
- WAC 392-172A-01088 Functional behavioral assessment. – Proposed rule has been withdrawn in response to public comments.
- WAC 392-172A-02076 Prohibited practices. – Revised terminology in response to public comments and to ensure consistency with RCW 28A.600.485.
- WAC 392-172A-02105 Crisis de-escalation and safety protocol. – Revised section title, terminology, and language for clarity in response to public comments and to ensure consistency with RCW 28A.600.485.

- WAC 392-172A-03045 District procedures for specific learning disabilities. – Revised language added to clarify the rule in response to public comments.
- WAC 392-172A-03055 Specific learning disability—Determination. – Revised language added to clarify the rule in response to public comments.
- WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. – Revised language added to clarify the rule in response to public comments.
- WAC 392-172A-03090 Definition of individualized education program. – Revised for consistency with revisions to WAC 392-172A-02105.
- WAC 392-172A-04080 Applicability and authorization. – Revised terminology for clarity.
- WAC 392-172A-04085 Responsibility of the school district. – Revised terminology for clarity.
- WAC 392-172A-04090 Approval of nonpublic agencies. – Portion of proposed rule withdrawn and revised to align with RCW 28A.300.690 to state as follows: “(3) Annual review and reauthorization. Nonpublic agencies will submit an application annually to OSPI for continuing nonpublic agency status and OSPI will conduct a full reauthorization of nonpublic agencies every three to five years in accordance with RCW 28A.300.690.”
- WAC 392-172A-04095 Authorization requirements for single-student contracted placements and educational service district programs. – Revised terminology for clarity.
- WAC 392-172A-04100 Notification of program changes and complaints. – Revised terminology for clarity.
- WAC 392-172A-04110 State responsibility for authorized contracted placements. – Revised terminology for clarity.
- WAC 392-172A-05085 Due process hearing request filing and response. – Revised filing information.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

|                                  |     |       |         |           |          |          |
|----------------------------------|-----|-------|---------|-----------|----------|----------|
| Federal statute:                 | New | _____ | Amended | _____     | Repealed | _____    |
| Federal rules or standards:      | New | _____ | Amended | _____     | Repealed | _____    |
| Recently enacted state statutes: | New | _____ | Amended | <u>20</u> | Repealed | <u>1</u> |

**The number of sections adopted at the request of a nongovernmental entity:**

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

**The number of sections adopted on the agency's own initiative:**

|     |       |         |           |          |          |
|-----|-------|---------|-----------|----------|----------|
| New | _____ | Amended | <u>48</u> | Repealed | <u>5</u> |
|-----|-------|---------|-----------|----------|----------|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

|                                              |     |       |         |       |          |       |
|----------------------------------------------|-----|-------|---------|-------|----------|-------|
| <b>The number of sections adopted using:</b> |     |       |         |       |          |       |
| Negotiated rule making:                      | New | _____ | Amended | _____ | Repealed | _____ |
| Pilot rule making:                           | New | _____ | Amended | _____ | Repealed | _____ |
| Other alternative rule making:               | New | _____ | Amended | _____ | Repealed | _____ |

|                                                          |                                                                                                         |
|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Date Adopted:</b> October 14, 2026                    | <b>Signature:</b><br> |
| <b>Name:</b> Chris Reykdal                               |                                                                                                         |
| <b>Title:</b> State Superintendent of Public Instruction |                                                                                                         |