



CONCISE EXPLANATORY STATEMENT

OSPI Rule Making

DATE: September 14, 2021

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SUBJECT: WAC Chapters 392-172A and 392-173;
WAC Sections 392-140-60105 through -60685
Rule-making Order filed as WSR 21-19-065, filed on September 14, 2021

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).

WAC Chapters 392-172A and 392-173; WAC Sections 392-140-60105 through -60685 WAC

I. REASON FOR ADOPTION

The purpose for the new and amended regulations, as well as for repealing existing regulations, is to (1) address changes to federal law and requirements; (2) clarify existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services; (3) add requirements from Engrossed Substitute House Bill (ESHB) 1130 (2020); and (4) make housekeeping changes to

correct typographical errors, reorganize and remove outdated WACs in these chapters for ease of reference, and other rule changes that are technical in nature.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 November 18, 2020 (WSR 20-23-116) and the final adopted rules, inclusive of the supplemental changes from April 21, 2021 (WSR 21-09-088) and responses to substantive comments, 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-01035 Child with a disability or student eligible for special education services.	<p>Subsection (2)(d)(vi) amended to state: “ (vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age ((nine)) <u>ten</u> and determined eligible for services under one of the other eligibility categories <u>in order to continue receiving special education services.</u>”</p> <p>Subsection (2)(e)(ii) amended to state: “ (ii) Emotional/behavioral disability includes schizophrenia <u>and other psychiatric conditions.</u> The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional/<u>behavioral disability</u> ((disturbance)) under (e)(i) of this subsection.</p>
WAC 392-172A-01109 Likelihood of serious harm.	Subsection (1)(a) amended to state: “ (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to <u>die by</u> ((commit)) suicide, or inflict physical harm on oneself; [...].”

<p>WAC 392-172A-01152 Regular early childhood program.</p>	<p>Section revised to state: "Regular early childhood program means a program that includes <u>at least fifty percent or more nondisabled children (i.e., children who do not have an IEP).</u> Programs may include, but are not limited to, the following: Head start; early childhood education and assistance program (ECEAP); <u>transitional kindergarten;</u> kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or child care."</p>
<p>WAC 392-172A-01155 Related services.</p>	<p>New subsection (3)(q) added to state: "<u>(q) Behavioral services means any services described in an IEP that specifically supports a student's behavioral needs.</u>"</p>
<p>WAC 392-172A-02050 Least restrictive environment.</p>	<p>New section (3) amended to state: "(3) The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the least restrictive environment where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local education agency operates public preschool programs for children without disabilities. <u>Least restrictive environment must be determined based on each individual child's needs and should not automatically be developmental preschool.</u></p> <p>New section (4) revised to state: "(4) For children ages three to five, a general education environment is a regular early childhood program <u>as defined in WAC 392-172A-01152.</u>"</p>
<p>WAC 392-172A-02080 Transition of children from the Part C program to preschool programs.</p>	<p>New subsection (2)(b) revised to state: "(b) Within <u>twenty-five fifteen</u> school days following the transition planning conference, a determination whether or not to evaluate the student for Part B will be made. The</p>

	<p>district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010."</p>
<p>WAC 392-172A-02090 Personnel qualifications.</p>	<p>Subsection (1)(b) revised to state: "(b) In addition to the requirement in (a) of this subsection, all special education (teachers) <u>personnel</u> providing, designing, supervising, monitoring or evaluating the provision of special education <u>services</u> shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement (<u>or early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, or teacher of the visually impaired endorsement</u>) on an individual teaching certificate issued by the OSPI, professional education and certification section."</p> <p>Subsection (1)(i) revised to state: "(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and (paraprofessionals) <u>paraeducators</u> may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff (<u>or early childhood special education certificated staff, deaf education certificated staff, deaf education with American Sign Language proficiency certificated staff, or teacher of the visually impaired certificated staff</u>), or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate."</p>

<p>WAC 392-172A-02105 Emergency response protocols.</p>	<p>Subsection (1)(d) amended to state: “(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and <u>currently</u> certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques) and the safe use of</u> isolation, restraint, or a restraint device.”</p>
<p>WAC 392-172A-02110 Isolation or restraint—Conditions.</p>	<p>Subsection (1)(f) amended to state: “(f) Any staff member or other adults using isolation must be trained and <u>currently</u> certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques), and also trained by the district in isolation requirements,</u> or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.”</p> <p>Subsection (2)(c) amended to state: “(c) Any staff member or other adults using a restraint must be trained and <u>currently</u> certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques) and</u> such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.”</p> <p>Subsection (3)(d) amended to state: “(d) Any staff member or other adults using a restraint device must be trained and <u>currently</u> certified by a qualified provider in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.”</p>

<p>WAC 392-172A-03005 Referral and timelines for initial evaluations.</p>	<p>New subsection (1)(b) revised to state: “(b) The request (will) <u>must</u> be in writing, unless the person is unable to write <u>and/or communicate orally.</u>”</p> <p>New subsection (1)(c) revised to state: “(c) Each school district must have <u>an optional</u> referral form for requesting an initial evaluation available to the general public and provide it upon receipt of <u>any referral</u> (oral or written) request in the requestor’s native language or with the support of a qualified interpreter when needed.”</p> <p>Section (2) amended to state: “(2) The school district must document the request for an initial evaluation, <u>including the date the request is received</u>, and: [...].”</p> <p>Subsection (2)(c) revised to state: “(c) Within <u>twenty-five</u> fifteen school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.”</p> <p>Section (3) amended to state: “(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, <u>attempt without unnecessary delay to obtain consent</u>, fully evaluate the student and arrive at a decision regarding eligibility within:”</p>
<p>WAC 392-172A-03100 Parent participation.</p>	<p>New subsection (3)(c) revised to read: “(c) Include whatever action is necessary to ensure that the parent understands the notification being provided, <u>including but not limited to</u>, providing the notification in writing in a parent’s native language when</p>

	<p>necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English."</p> <p>Section (7) revised and amended to read: "(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including <u>but not limited to:</u> <u>(a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents;</u> <u>(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and</u> (b) <u>(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided in accordance with RCW 28A.155.230."</u></p>
<p>WAC 392-172A-04095 Application requirements for nonpublic agency approval.</p>	<p>New section (3) revised to read: "(3) OSPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval under this section, <u>and provide an indication of a change to the approval requirements for any nonpublic agency on the list of currently approved nonpublic agencies available to the public maintained on the OSPI website."</u></p>
<p>WAC 392-172A-05001 Parent participation in meetings.</p>	<p>New section (4) revised and amended to read: "(4) For any meeting under this section, <u>including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW 28A.155.230, each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including but not limited to:</u> <u>(a) Notifying parents in advance in the parent's native language of the availability of</u></p>

	<p><u>interpretation and translation services at no cost to the parents;</u> <u>(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and</u> <u>(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided."</u> at any meeting under this section, including meetings related to a student's IEP, student discipline, and truancy in accordance with RCW 28A.155.230</p>
WAC 392-172A-05030 Investigation of the complaint and decision.	Section (5) revised to read: "(5) The OSPI will review and determine which portions of the district's or other agency's response is relevant to the complaint and provide the complainant a copy of the school district's or other agency's relevant response to the complaint and provide the complainant an opportunity to reply. If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant."
WAC 392-172A-07060 State special education advisory council.	Subsection (2)(b) amended to read: "(b) A majority of the members of the council shall be individuals with disabilities or parents of students eligible for special education services <u>who are not also employed by a school district, educational service district, or the office of the superintendent of public instruction."</u>

Section	Edit/Change
WAC 392-140-60105 Definition – High need student.	Section (2) revised to read: "(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the the multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of

	<p>the legislature, and published in the annual <i>Safety Net Bulletin</i>)) lesser of:</p> <p>(a) Two and three tenths times the statewide average per pupil expenditure excluding provided state safety net funding; or</p> <p>(b) The average per pupil expenditure calculated using the methodology defined in 20 U.S.C. Sec. 7801, the Every Student Succeeds Act of 2015, excluding provided state safety net funding, using only the expenditure and average daily attendance data for the subset of districts receiving the same salary regionalization factor as the high need student's district, as determined under RCW 28A.150.412 and the Omnibus Operating Appropriations Act.</p>
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III. PUBLIC COMMENT

OSPI filed the proposed rules on November 18, 2020. The CR-102 Notice of Proposed Rulemaking was published in the Washington State Register as WSR 20-23-116. Public hearings were held on January 13, 2021 at 3:30pm and January 20, 2021 at 9:00am, via Zoom webinar (with a call-in option) due to the COVID-19 virus pandemic. Written comments on the proposed rules were accepted via mail, fax, and e-mail through January 20, 2021.

OSPI initiated a supplemental public comment on April 21, 2021. The CR-102 Supplemental Notice of Proposed Rule Making was published in the Washington State Register as WSR 21-09-088. A public hearing was held via Zoom webinar (with a call-in option) due to the COVID-19 virus pandemic on May 25, 2021 at 1:00pm. Written comments on the proposed supplemental rules were accepted by mail, fax, and e-mail through May 25, 2021.

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

(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 table.

SUMMARY OF PUBLIC COMMENTS and OSPI RESPONSES

Summary of Comments Received	OSPI considered all comments. The following explains actions taken in response to comments, or reasons no actions were taken.
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A. General Comments	
1. Multiple commenters expressed appreciation for the various language changes made throughout the WAC.	OSPI appreciates the feedback and is dedicated to ensuring that the WAC reflects culturally appropriate language.
2. One commenter encouraged OSPI to use its rulemaking authority rather than nonbinding guidance to address identified problems with special education in Washington.	OSPI appreciates the feedback and will use its rulemaking authority, as appropriate, to support the provision of special education services in Washington.

B. WAC 392-172A-01035. Child with a disability or student with a disability.	
1. Multiple commenters requested clarification on the proposed changes to the “developmental delay” category. Commenters were unsure if OSPI’s intention was to extend special education services through age nine and when another eligibility category needed to be used in order for a student to continue receiving special education services.	OSPI has amended subsection (2)(d)(vi) to state: “(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age ((nine)) <u>ten</u> and determined eligible for services under one of the other eligibility categories <u>in order to continue receiving special education services.</u> ” Supplemental comments received on this proposed change are included below.
2. Several commenters expressed support for the proposed rule changes to the definition of “developmental delay” and the potential for additional language to prevent school districts from misapplying eligibility criteria in the developmental delay category.	OSPI appreciates the feedback provided and believes the proposed rule under subsection (1)(e) sufficiently addresses concerns regarding the misapplication of the eligibility criteria for the developmental delay category.
3. Multiple commenters requested clarification on the meaning of the new proposed subsection (1)(e), which states: “(e) Special	The intent of the proposed change is to clarify that the purpose of an evaluation for special education services is for more than establishing an eligibility category; the evaluation report should provide recommendations that

education services may not be solely based on the disability category for which the student is eligible."	an IEP team can use to address all of the student's needs.
4. One commenter suggested eliminating all eligibility categories.	OSPI will continue to use eligibility categories in accordance with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.
5. One commenter requested that additional language be added to the definition of "deafness" in order to clarify how a "severe difficulty" would be measured and distinguished from the "hard of hearing" category. The commenter questioned if auditory processing disorder could fall under these categories.	OSPI believes it is the role of a group of qualified professionals and the parent of the student to review the evaluation report and determine whether the student meets the eligibility criteria including presence of a disability, adverse educational impact, and need for specially designed instruction. (WAC 392-172A-03040).
6. Multiple commenters requested a change to the standard deviation rule for all deaf and hard of hearing children.	OSPI is unable to make the changes requested because the current definitions of "deafness" and "hard of hearing" under WAC 392-172A-01035 do not currently contain a standard deviation rule.
7. One commenter questioned why the definition of emotional/behavioral disability explicitly includes schizophrenia and does not include other types of serious psychiatric disorders.	OSPI has amended subsection (2)(e)(ii) to state: "(ii) Emotional/behavioral disability includes schizophrenia <u>and other psychiatric conditions</u> . The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional/ <u>behavioral disability disturbance</u> under (e)(i) of this subsection." OSPI received no supplemental comments on this change.
Supplemental Comments	
S1. One commenter suggested amending subsection (2)(d)(iii) to required school districts to use the developmental delay category. The commenter stated that by using language that implies use of this category is a choice left up to individual districts, there is the	OSPI cannot require school districts to adopt and use the term "developmental delay" for any children within its jurisdiction (see, 34 CFR § 300.111). OSPI, however, does commit to working with the commenter on exploring other alternatives to achieve the goal of eliminating unintended harm and systemic inequity within the Child Find process for children ages three through five.

<p>possibility for unintended harm and systemic inequity in Child Find processes for children ages three through five.</p>	
<p>S2. One commenter stated that much more should be done to support students and families navigating the IEP process and accessing services as this area remains highly contentious and confusing for families and subject to bias.</p>	<p>OSPI is committed to continuously examining the process of identifying a student eligible for special education services and will continue to provide guidance and technical assistance to the field.</p>

<p>C. WAC 392-172A-01109. Likelihood of serious harm.</p>	
<p>1. One commenter stated that the definition of likelihood of serious harm allows restraint for damage of property, regardless of whether or not property damage would inflict harm to one’s self or others. The commenter claims this definition does not align with federal guidance.</p>	<p>OSPI cannot change the language in this manner through the rulemaking process. The definition of “likelihood of serious harm” is included in the language of RCW 71.05.020 which is referenced under RCW 28A.600.485. The prior statutory definition referencing RCW 70.96B.010 was repealed and recodified pursuant to the Community Behavioral Health Services Act of 2019 (SSB 5380). The commenter’s request requires legislative action. OSPI, however, is committed to providing guidance and ongoing technical assistance to the field on this important subject.</p>
<p>2. One commenter pointed out that the current phrase “commit suicide” is outdated and stigmatizing. The commenter suggests “attempts to die by suicide” as an alternative.</p>	<p>OSPI has amended subsection (1)(a) to state: “(a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to <u>die by</u> commit suicide, or inflict physical harm on oneself;[.]”</p> <p>OSPI received no supplemental comments on this change.</p>

<p>D. WAC 392-172A-01152. Regular early childhood program.</p>	
<p>1. One commenter requested clarifying the number of students without an IEP that need to be present in order for a setting to be</p>	<p>OSPI revised this section to state: “Regular early childhood program means a program that includes at least fifty percent or more nondisabled children (i.e., children who do not have an IEP). Programs may include, but are not limited to, the following: Head start;</p>

<p>considered a regular early childhood program.</p>	<p>early childhood education and assistance program (ECEAP); <u>transitional kindergarten</u>; kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or child care.”</p> <p>OSPI received no supplemental comments on this revised language.</p>
<p>2. Multiple commenters supported adopting the proposed definition of “regular early childhood program” to promote “inclusion with typically-developing peers in an array of community-based settings, including private school and childcare.”</p>	<p>OSPI appreciates the feedback provided.</p>

<p>E. WAC 392-172A-01155. Related services.</p>	
<p>1. Numerous commenters supported the inclusion of behavioral services as a related service and requested the OSPI include a definition of behavioral services. Various suggestions for a definition were offered.</p>	<p>OSPI added subsection (3)(q) in response to comments: <u>“(q) Behavioral services means any services described in an IEP that specifically supports a student’s behavioral needs.”</u></p> <p>OSPI received no supplemental comments on this additional language.</p>
<p>2. One commenter questioned whether organization/study skills/executive functioning, or social/emotional functioning, could also be considered a related service and clearly defined in the rules.</p>	<p>OSPI does not believe additional definitions are needed at this time. The list of related services under WAC 392-172A-01155 is not an exhaustive list. Related services are services required to assist a student eligible for special education services to benefit from specially designed instruction. OSPI believes an IEP team is in the best position to determine on an individual basis if a particular service meets a student’s need as specially designed instruction or as a related service.</p>

<p>F. WAC 392-172A-01170. Services plan.</p>	
<p>1. One commenter opposed the proposed insertion of the term</p>	<p>The proposed changes clarify that the existing definition of an elementary and secondary school under</p>

<p>“nonprofit” before the term “private school” throughout the chapter because they believed this change would limit private placements by a local educational agency to nonprofit schools.</p>	<p>WAC 392-172A-01060 applies to students enrolled by their parents in a private school who have a services plan. The changes do not apply to a private placement by a school district/local educational agency.</p>
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<p>G. (New Section) WAC 392-172A-01197. Universal design for learning.</p>	
<p>1. Multiple commenters expressed support for including a definition of Universal Design for Learning (UDL) and encouraged wider acceptance beyond special education regulations.</p>	<p>OSPI appreciates the feedback received. The definition of UDL is included in order to align special education regulations with the federal definition included in the Every Student Succeeds Act (ESSA) and to promote greater consistency between general education and special education settings.</p>
<p>2. One commenter asked a question about accountability to a definition that does not appear any other place within the rules.</p>	<p>OSPI believes that it is not necessary for a definition included in this chapter to be applicable to a specific requirement in order to be useful (e.g., WAC 392-172A-01195).</p>

<p>H. WAC 392-172A-02040. Child find.</p>	
<p>1. One commenter requested clarification on the responsibility for the provision of educational services when a student is not living in their custodial parent’s home.</p>	<p>Child find responsibilities under WAC Section 392-172A-02040 apply to students who reside within the school district boundaries. Student residence is defined under WAC Section 392-137-115. School districts are not responsible for providing special education services to students who no longer reside within the school district.</p>
<p>Supplemental Comment</p>	
<p>S1. One commenter requested clarification on school district responsibilities related to child find activities, reevaluation, or compensatory reimbursement for a student who is or may be eligible for special education services and is temporarily placed in an out-of-state residential treatment center by their parents or another state agency.</p>	<p>School districts are not responsible for providing special education services to students who no longer reside within the school district due to placement in an out-of-state residential treatment center by parents or other state agency. The school district where the student resides is responsible for FAPE (see response H-1). If, on the other hand, a student’s IEP team determines that a student’s need for special education cannot be met by the services available in their school district of residence, then the school district may contract for placement with an out-of-state school or facility in accordance with WAC Section 392-172A-04080 through</p>

	WAC Section 392-172A-04110 . Existing school district attendance policies may also be applicable depending upon the nature and circumstances of the student’s temporary absence.
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I. WAC 392-172A-02050. Least restrictive environment.	
1. One commenter asked how the proposed changes will be measured once adopted.	OSPI will continue to measure and monitor outcomes within the Federal reporting indicators B6 and B7. More information about OSPI Program Improvement activities can be found on the OSPI Special Education website .
2. Several commenters supported adopting the proposed changes clarifying the applicability of the least restrictive environment rule to early learning settings and regular early childhood programs.	OSPI appreciates the feedback provided and continues to clarify that this is a current requirement of IDEA (see response I-3).
3. Multiple commenters opposed the proposed rule because it gives the impression that a regular early childhood program is the only way to provide FAPE to an eligible student and because of the lack of regular early childhood program options for smaller school districts.	The proposed rule does not mandate placement in a public or private regular early childhood program. The proposed rule, rather, clarifies existing requirements regarding placement decisions for a student eligible for special education. Services in a regular early childhood program setting, as defined under the proposed rule in WAC 392-172A-01152, are an option for an IEP team to consider in order to meet the least restrictive environment requirement. OSPI does not believe the proposed rule changes the need to consider regular early childhood programs as a placement option regardless of availability within smaller school districts. OSPI is committed to providing all school districts with guidance and technical assistance on the use of funds as well as consider cross-agency partnerships that will expand access to regular early childhood programs.
4. Several commenters expressed concerns about the potential costs to school districts to comply with the proposed rule. Commenters requested guidance on funding options for school districts.	See response I-3.

<p>5. Multiple commenters opposed the proposed rule due to concerns about the cost of a private regular early childhood program to the families of students eligible for special education services. One commenter suggested waiting to adopt the proposed rule until all students have access to preschool programs.</p>	<p>OSPI supports the potential to fund universal preschool education throughout public schools in Washington. A student eligible for special education services, however, has right to receive FAPE under WAC Section 392-172A-02000. Placement in a regular early childhood program is thus provided at public expense, under public supervision and direction, and without charge (WAC Section 392-172A-01080).</p>
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<p>Supplemental Comments</p>	
<p>S1. One commenter expressed continued support for the proposed changes.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>S2. One commenter recommended OSPI add additional language to clarify that the least restrictive environment for a preschool-aged student eligible for special education services is the general education environment. The commenter also recommended the rule explicitly reference the definition of a “regular early childhood program” and state that the least restrictive environment must be determined based on each individual student’s needs and should not automatically be developmental preschool.</p>	<p>OSPI affirms that the selection of an appropriate placement for a student is made by a student’s IEP team taking into consideration the least restrictive environment requirements.</p> <p>OSPI agrees with the commenter’s recommendations and amended section (3) to state: “(3) The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the least restrictive environment where the child’s unique needs (as described in the child’s IEP) can be met, regardless of whether the local education agency operates public preschool programs for children without disabilities. <u>Least restrictive environment must be determined based on each individual child’s needs and should not automatically be developmental preschool.</u></p> <p>OSPI also revised section (4) to state: “(4) For children ages three to five, a general education environment is a regular early childhood program <u>as defined in WAC 392-172A-01152.</u>”</p>

<p>J. WAC 392-172A-02055. Continuum of alternative placements.</p>	
<p>1. One commenter expressed support for the proposed changes clarifying the applicability of the</p>	<p>OSPI appreciates the feedback provided.</p>

continuum of alternative placement options for students ages three through five years old.	
2. Multiple commenters expressed concern about the proposed rule requiring school districts to create and run a general education preschool program and the lack of funding available.	See response I-3.
3. One commenter expressed concern about the ability of private preschool programs to meet the requirements for Non-Public Agency (NPA) status.	The NPA process currently applies only to private elementary or secondary schools which by definition (WAC Section 392-172A-01060) does not include private preschool programs.
Supplemental Comment	
S1. One commenter stated that the proposed rule omits key requirements for children ages three through five and recommended additional language to clarify that the least restrictive environment for a student ages three through five may often be a regular early childhood program. The commenter also recommended including an option for school districts to partner with an eligible student's early learning provider.	See response I-S2. OSPI believes the revisions to WAC 392-172A-02050 sufficiently address the commenter's concerns. OSPI is committed to continually addressing the need for inclusionary practices for students ages three through five eligible for special education services through guidance and technical assistance to the field.
S2. One commenter expressed continued support for the proposed changes.	OSPI appreciates the feedback provided.

K. WAC 392-172A-02076. Prohibited practices.	
1. Several commenters expressed support for the proposed changes prohibiting the use of prone, supine, and wall restraints.	OSPI appreciate the feedback provided.

Supplemental Comment	
S1. Multiple commenters expressed continued support for the proposed changes.	OSPI appreciates the feedback provided.

L. WAC 392-172A-02080. Transition of children from the Part C program to preschool programs.	
1. One commenter expressed support for the proposed changes clarifying the timeline for transition from Part C programs to Part B preschool programs.	OSPI appreciates the feedback provided.
2. Numerous commenters opposed the proposed 15-day timeline to determine if a student receiving Part C services will be evaluated for Part B services. Commenters pointed out that school districts need the full 90 days to determine if a student is eligible for Part B services.	<p>OSPI agrees with the concerns expressed by commenters and revised the proposed new subsection (2)(b) to state: “(b) Within twenty-five ^{fifteen} school days following the transition planning conference, a determination whether or not to evaluate the student for Part B will be made. The district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.”</p> <p>The proposed revised changes clarifies when the referral timeline for transitions from Part C to Part B begin consistent with the 90-day timeline described in WAC Section 392-172A-02080(2)(a) and WAC Section 392-172A-03005.</p> <p>OSPI received no supplemental comments on this revised language.</p>
3. One commenter raised concerns about the proposed 15-day timeline due to the possibility of Part C providers failing to notify Part B providers (school districts) of a potentially eligible student and the inability to participate in a transition conference.	<p>OSPI acknowledges the commenter’s concern about the proposed timeline and revised the proposed changes accordingly. See response L-2.</p> <p>OSPI believes the proposed change will create clarity as to when the timeline begins for school districts to respond to the initial notification of a potentially eligible child. An interagency agreement between OSPI and the Washington Department of Children, Youth, and Families (DCYF) outlines the responsibilities of Part C providers and addresses the commenter’s concerns regarding notification.</p>

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M. WAC 392-172A-02100. Home/hospital instruction.	
1. One commenter requested clarification from OSPI due to the potential confusion families and school districts experience around the relationship of home/hospital instruction to special education services. The commenter requested clarification on home and hospital-based instruction as part of the continuum of placement options for students receiving special education services. The commenter also requested clarifying that students receiving special education services are still eligible for FAPE, and still require access to general education curriculum, the least restrictive environment, and implementation an IEP.	OSPI believes the proposed rule changes reorganizing this section addresses the commenter’s request for clarification. Subsection (5) directly distinguishes reimbursement for home/hospital instructional services from “a homebound or hospital placement pursuant to a student’s individualized education program” in accordance with WAC Section 392-172A-02055 . Subsection (7) also explicitly states that student receiving home/hospital instructional services “must continue to receive IEP team determined educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP.” OSPI is committed to ongoing guidance and technical assistance to the field regarding these distinctions. Any potential issues regarding the provision of FAPE to a student eligible for special education services can be resolved under the IDEA and Washington state special education dispute resolution mechanisms.

N. WAC 392-172A-02105. Emergency response protocols.	
1. One commenter proposed adding NPAs and schools run by educational service districts (ESDs) to the documentation and reporting requirements in subsection (2) of the rule. The commenter believes these changes will make data collection by OSPI on the use of restraint and isolation easier and protect against potential noncompliance with the existing rules.	The definition of term “school district” as used in Chapter 392-172A includes ESDs (WAC Section 392-172A-01115). School districts retain responsibility for students placed at an NPA under WAC Section 392-172A-04085 . OSPI believes the proposed changes to WAC Section 392-172A-04085 regarding reporting requirements for the use of restraint/isolation at NPAs are consistent with the commenter’s suggestion.
2. One commenter asked how can parents affirm that staff have the appropriate training described in the rule?	Families can request information from a school district on the level of training staff have received when developing an emergency response protocol under this section. OSPI is also committed to ongoing guidance

	and technical assistance to the field regarding staff training and certification.
3. One commenter expressed support for adding language around trauma-informed crisis intervention and de-escalation techniques.	OSPI appreciates the feedback provided.
Supplemental Comments	
S1. One commenter proposed adding the word “currently” in front of the word “certified” in subsection (1)(d). The commenter explained that families are concerned that some school districts do not monitor for or require that district employees receive training beyond the initial training. The addition of the word “currently” would ensure that school districts provide for refresher courses in trauma-informed crisis intervention and de-escalation techniques, rather than just require one training during the employee’s tenure.	OSPI agrees with the commenter’s proposal. Subsection (1)(d) has been amended to state: “(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and <u>currently</u> certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques) and the safe use of</u> isolation, restraint, or a restraint device.”
S2. Multiple commenters expressed continued support for the proposed changes.	OSPI appreciates the feedback provided.

O. WAC 392-172A-02110. Isolation or restraint—Conditions.	
1. One commenter expressed support for adding language around trauma-informed crisis intervention and de-escalation techniques.	OSPI appreciates the feedback provided.
2. One commenter proposed adding NPAs and schools run by educational service districts (ESDs) to the documentation and	See response N-1.

<p>reporting requirements in subsection (4) of the rule. The commenter believes these changes will make data collection by OSPI on the use of restraint and isolation easier and protect against potential noncompliance with the existing rules.</p>	
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<p>Supplemental Comment</p>	
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<p>S1. One commenter expressed support for adding language around trauma-informed crisis intervention and de-escalation techniques and proposed adding the word "currently" in front of the word "certified" throughout this section. (See also comment N-S1). The commenter also requested clarifying subsection (2)(c) to state that the person using restraints is trained and currently certified in the trauma informed crisis intervention and de-escalation techniques as well as restraint requirements or are otherwise available in the case of emergency when trained personnel are not immediately available.</p>	<p>OSPI appreciates the feedback provided and believes the current language of subsection (2)(c) adequately addresses the commenter's concerns about the availability of trained personnel.</p> <p>OSPI, however, agrees with the commenter's proposed changes throughout this section. Subsection (1)(f) has been amended to state: "(f) Any staff member or other adults using isolation must be trained and <u>currently certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques)</u>, and also trained by the district in isolation requirements</u>, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency."</p> <p>Subsection (2)(c) has been amended to state: "(c) Any staff member or other adults using a restraint must be trained and <u>currently certified by a qualified provider in the use of <u>trauma-informed crisis intervention (including de-escalation techniques)</u> and such restraints</u>, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency."</p> <p>Subsection (3)(d) has been amended to state: "(d) Any staff member or other adults using a restraint device must be trained and <u>currently certified by a qualified provider in the use of such restraint devices</u>, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency."</p>
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P. WAC 392-172A-03005. Referral and timelines for initial evaluations.	
<p>1. Numerous commenters opposed the proposed timeline change from 25 school days to 15 school days for a school district to respond to a referral for special education services. Commenters cited general difficulties with collecting and examining existing records within a shortened timeline. Many commenters detailed experiences managing and collecting information within a current district multi-tiered system of support; providing services across large, rural geographical regions; struggles managing current caseloads under the current timeline; and ongoing staffing and resource shortages and struggles as reasons for being opposed to the proposed 15 school day timeline. Some commenters specifically pointed-out that it may take as much as 15 school days or more for medical provider agencies to respond to and fulfill requests for information from school districts.</p>	<p>OSPI acknowledges the various concerns expressed by numerous commenters about the proposed timeline and revised the proposed changes accordingly.</p> <p>Subsection (2)(c) now reads: “(c) Within twenty-five <u>fifteen</u> school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.”</p> <p>Supplemental comments received on this proposed change back to the original timeline are included below.</p>
<p>2. Numerous commenters expressed support for the proposed timeline change from 25 school days to 15 school days for a school district to respond to a referral for special education services. Commenters expressed a need to minimize delays in the referral process and in completing an initial evaluation for special education services. Commenters shared experiences of students being unable to access special</p>	<p>OSPI appreciates the feedback provided. The proposed changes, however, have been revised to reflect the original timeline because OSPI has concluded that a reduced referral timeline will likely cause more confusion and greater delays rather than provide the intended clarification necessary to improve access to services (see response P-1).</p> <p>OSPI believes that for now the proposed supplemental changes to WAC 392-172A-03005 regarding the use of a referral form and documentation of a request for an initial evaluation sufficiently address the concerns expressed by commenters. OSPI is committed to</p>

<p>education services due to unnecessary delays.</p>	<p>ongoing guidance and technical assistance to the field regarding referral and initial evaluation timelines.</p>
<p>3. One commenter opposed the inclusion of an optional referral form in the proposed changes. The commenter suggested a "consultation request form" as an alternative for student support/intervention teams to begin addressing specified concerns and allow the data-based decision-making. The commenter believes it is much more helpful to follow the support/intervention process, so as to unnecessarily commit limited resources to considering special education services when less restrictive interventions have not yet been considered or attempted.</p>	<p>OSPI believes the commenter's suggestion may unnecessarily complicate and delay the special education referral process. A referral and/or decision to evaluate a student for special education services may not be delayed on the basis of completing a district response to intervention process.</p>
<p>4. Numerous commenters requested clarification on the date in which the referral timeline starts. Commenters also expressed concern and confusion about whether the use of a district referral form was required to initiate the timeline.</p>	<p>The referral timeline starts on the date the request is received in writing. School districts must document the date the request is received. Each school district must also have an optional referral form available to use to document receiving a verbal request or to support any individual who is unable to write or communicate orally in completing a written request.</p> <p>WAC 392-172A-03005 subsection (1)(b) has been revised to state: "<u>(b)</u> The request will <u>must</u> be in writing, unless the person is unable to write <u>and/or communicate orally</u>."</p> <p>New subsection (1)(c) has been revised to state: "(c) Each school district must have <u>an optional</u> referral form for requesting an initial evaluation available to the general public and provide it upon receipt of <u>any referral</u> oral or written request in the requestor's native language or with the support of a qualified interpreter when needed."</p>

	<p>Section (2) has been amended to state: "(2) The school district must document the request for an initial evaluation, <u>including the date the request is received</u>, and: [...]."</p> <p>Supplemental comments received on these proposed changes are included below.</p>
<p>5. Several commenters expressed support for the proposed changes to the referral timeline and inclusion of a special education referral form.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>6. One commenter requested allowing parents to request initial evaluations either verbally, in writing, or through other means. The commenter explained that there may be situations where a requestor may not be able to write or communicate orally.</p>	<p>See response P-4.</p>
<p>7. Multiple commenters requested that initial evaluations and reevaluations continue to use a 35 school day timeline (rather than calendar days) in order to ensure enough time to properly evaluate students.</p>	<p>OSPI has not proposed changing the current 35 school day timeline for completing an initial evaluation.</p>
<p>8. One commenter requested technical clarifications on the special education referral and initial evaluation timelines in order to prevent undue delays. The commenter suggested: (1) maintaining a 15 school day timeline for responding to a special education referral; (2) clarifying that school districts must, within 5-10 business days of determining that a student who has been referred for special</p>	<p>OSPI acknowledges the various concerns expressed by the commenter and believes: (1) that a reduced referral timeline will likely cause more confusion and greater delays rather than provide the intended clarification necessary to improve access to services (see also response P-2); (2) that a specific timeline for obtaining parental consent would impose an arbitrary new requirement upon school districts, however, the supplemental changes to WAC 392-172A-03005(3) clarifying that school districts must "attempt without unnecessary delay to obtain" parental consent sufficiently address the commenter's concerns (see also response P-S1); (3) that the timeline for counting</p>

<p>education should be evaluated, use due diligence in obtaining parental consent and provide parents with necessary consent paperwork; (3) clarifying that a school district that offers summer school or extended school year services must count these days as "school days" for completing an evaluation; and (4) clarifying that a school district cannot decline to evaluate a student who has been referred for special education solely or primarily on the basis that the evaluation cannot be completed by the end of a school year or the likelihood of a student's continued enrollment in the school district.</p>	<p>"school days" should follow the calendar adopted by the local school district board of directors; and (4) that any dispute regarding the reasons provided by a school district for refusing to initiate an initial evaluation for special education services can be resolved under the IDEA and Washington state special education dispute resolution mechanisms.</p>
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<p>Supplemental Comments</p>	
<p>S1. One commenter reiterated prior concerns about the need for technical clarifications regarding special education referral and initial evaluation timelines. The commenter explained that some time limit between a district decision that a student should be evaluated and providing the parent with a consent form for an initial evaluation is necessary.</p>	<p>OSPI acknowledges the prior concerns expressed by the commenter (see response P-8).</p> <p>OSPI agrees with the commenter's explanation that additional clarification is needed regarding the process of obtaining parent consent once a school district has decided an initial evaluation for special education services is needed. WAC 392-172A-03005(3) has been amended to state: "(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, <u>attempt without unnecessary delay to</u> obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within."</p>
<p>S2. One commenter expressed concern about the referral timeline for students transitioning from Part C to Part B services. The commenter claims that children with birthdays from May to August would potentially not</p>	<p>The proposed exception under WAC 392-172A-03005 subsection (2)(d) sufficiently addresses the commenter's concerns about students who reach the age of three over the summer by applying the referral timelines under WAC Section 392-172A-02080. Students eligible for special education services must have an IEP developed and implemented by their third birthday</p>

<p>receive a decision until September and recommends changing the referral timeline to 25 calendar days, not school days.</p>	<p>(WAC Section 392-172A-02080(3)). OSPI has concluded based on prior comments that keeping the original referral timeline of 25 school days will minimize disruption to the overall process (see responses P-1 and P-2).</p>
<p>S3. One commenter expressed support for the proposed rule under WAC 392-172A-03005(2)(d) because it potentially creates a more family-friendly transition process by considering the transition planning conference itself to be the referral.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>S4. One commenter suggested that more should be done to support students and families navigating the IEP process and accessing services. The commenter claims that the referral and initial evaluation remain highly contentious and confusing areas for families and are potentially subject to bias.</p>	<p>OSPI believes the proposed changes will begin to address the commenter’s concerns. OSPI is also committed to ongoing guidance and technical assistance to the field regarding referral and initial evaluation timelines as well as the elimination of bias throughout the process.</p>
<p>S5. One commenter stated that the proposed rule should be revised to allow for verbal requests for special education services. The commenter also suggested that the proposed rule make clear that the referral form is mandatory for the school district to maintain and offer, but is optional for the family to use. The commenter explained how the proposed rule is vague; foreseeing situations where, upon receiving a verbal or written request for special education services, a school district requires the requestor to fill out the form and does not begin the referral</p>	<p>OSPI believes the proposed supplemental changes sufficiently address the commenter’s concerns (see response P-4). A school district that requires the use of an optional form and does not acknowledge and/or provide support to a family making a verbal request for special education services is in direct violation of the proposed rule. Any dispute regarding a request for special education services and the referral timeline can be resolved under the IDEA and Washington state special education dispute resolution mechanisms.</p>

<p>timeline until it is in receipt of the form.</p>	
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<p>Q. WAC 392-172A-03015. Reevaluation timelines.</p>	
<p>1. One commenter requested that OSPI adjust reevaluation and evaluation timelines to meet the needs of highly mobile students and avoid loss of educational opportunity due to slow or delayed evaluations. The commenter proposed tightening timelines and more promptly initiating consent procedures necessary to trigger the 35-day timeline for reevaluations.</p>	<p>OSPI believes the proposed changes under WAC 392-172A-03005 regarding referrals and timelines for initial evaluations sufficiently address the commenters concerns about delays in obtaining consent for the initial evaluation process (see response P-4 and P-S1).</p> <p>OSPI, however, declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on the reevaluation process. Any unnecessary delays in response to parent requests and/or in the reevaluation process can be addressed through training and technical assistance provided to the field and any conflict can be resolved under the IDEA and Washington state special education dispute resolution mechanisms.</p>
<p>2. Multiple commenters requested that initial evaluations and reevaluations continue to use a 35 school day timeline (rather than calendar days) in order to ensure enough time to properly evaluate students.</p>	<p>OSPI has not proposed changing the current 35 school day timeline for completing a reevaluation.</p>

<p>R. WAC 392-172A-03040 Determination of eligibility.</p>	
<p>1. One commenter advocated for including changes to WAC 392-172A-03040(1)(b) that require school districts to provide copies of the evaluation report and documentation of the determination of eligibility for special education services translated into the parent's native language prior to the eligibility meeting.</p>	<p>WAC Section 392-172A-05010 already currently requires prior written notice to be "provided in the native language of the parent or other mode of communication used by the parent." OSPI, however, declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on school districts within the rules for the provision of special education services on translating specific documents and providing copies of such documents in advance of meetings. Any disputes regarding the accessibility and translation of vital documents can be resolved under existing school district policy and dispute resolution mechanisms</p>

	related to the Equal Educational Opportunity Act and Title VI of the Civil Rights Act of 1964.
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S. WAC 392-172A-03090. Definition of individualized education program	
1. One commenter expressed support for the proposed changes ensuring parents are informed that a student’s academic achievement will be measured on alternate standards and an alternate assessment may affect completion of regular high school diploma requirements. The commenter also raised concerns about the proposal to include “input from IEP team members” as an additional basis for IEP services. The commenter believes this change will dilute the importance of science in determining which services will meet the student’s needs.	OSPI appreciates the feedback provided. The IEP team, however, is responsible for determining the special education and related services, and supplementary aids and services, necessary for a student to receive FAPE. The proposed change clarifies that evaluation data and input from the IEP team, which includes parents who often may not feel heard throughout the process, are additional factors to consider when developing and revising an IEP.

T. WAC 392-172A-03100. Parent participation.	
1. One commenter requested that OSPI lower the requirement for including a student in an IEP team meeting from age 16 to age 14. The commenter also suggested adding additional language to the rule referencing district policy because some school districts have determined that post-secondary transition meetings take place prior to age 16.	The current language under WAC 392-172A-03100(4) already permits an IEP team to invite a student to participate prior to age 16 “if determined appropriate by the IEP team.” OSPI believes the current language is sufficient to address the commenter’s concerns and thus declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on participation in IEP team meetings.
2. Multiple commenters suggested adding additional language to subsection (7) addressing the responsibility of a school district to provide disability-related accommodations for parents. One	OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on parent participation in IEP team meetings. Parent requests for disability-related accommodations can be addressed through existing

<p>commenter added a request to define the term “reasonable” and clarify that the primary choice of what accommodation parent will receive is up to the parent's preference, not the school district.</p>	<p>school district policy related to Title II of the Americans with Disabilities Act of 1990.</p>
<p>3. Multiple commenters expressed support for the proposed changes related to parent notification and language access.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>4. One commenter stated that they believe the IEP should be provided to the parents prior to the meeting in the parents’ native language.</p>	<p>School districts are currently not required to provide draft documents in advance of an IEP meeting and OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements to produce draft documents prior to IEP meetings. OSPI is committed to providing guidance, training, and technical assistance on best practices for IEP team meetings particularly when working with families whose native language is not English.</p>
<p>Supplemental Comments</p>	
<p>S1. Multiple commenters reiterated support for the proposed changes related to parent notification and language access.</p>	<p>OSPI appreciates the feedback provided.</p>
<p>S2. One commenter pointed out that subsection (7) explicitly lists parents who are deaf or hard of hearing but not other potential disabilities. The commenter suggested expanding the language beyond deaf and hard of hearing individuals.</p>	<p>OSPI agrees with the commenter’s suggestion and included the phrase “including but not limited to” throughout the rule.</p> <p>Subsection (3)(c) now reads: “(c) Include whatever action is necessary to ensure that the parent understands the notification being provided, <u>including but not limited to</u>, providing the notification in writing in a parent's native language when necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.”</p> <p>Section (7) now reads: “(7) The school district must take whatever action is necessary to ensure that the parent</p>

	<p>understands the proceedings of the IEP team meeting, including <u>but not limited to:</u></p> <p><u>(a) Notifying parents in advance in the parent’s native language of the availability of interpretation and translation services at no cost to the parents;</u></p> <p><u>(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and</u></p> <p><u>(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student’s family was provided in accordance with RCW 28A.155.230.”</u></p>
<p>S3. One commenter asked that the rules specify when translations should be offered or what documents are covered by the translation mandate – such as IEPs, evaluations, proposed plans, or meeting notices. The commenter stated that a student’s IEP and evaluation should be deemed vital educational documents that must be made accessible to parents with limited English proficiency.</p>	<p>OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on school districts within the rules for the provision of special education services on translating specific documents. Any disputes regarding the accessibility and translation of vital documents can be resolved under existing school district policy and dispute resolution mechanisms related to the Equal Educational Opportunity Act and Title VI of the Civil Rights Act of 1964.</p>

<p>U. WAC 392-172A-03105. When IEPs must be in effect.</p>	
<p>1. One commenter suggested changing the requirement under WAC 392-172A-03105(2)(a) for a school district to hold a meeting to develop a student’s IEP within 30 days of a determination that the student is eligible for special education and related services to 20 school days.</p>	<p>OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on school districts for holding a meeting to develop a student’s IEP. A reduction in the number of days to hold a meeting to develop a student’s initial IEP has the potential to delay the implementation of services to an eligible student.</p>
<p>2. One commenter suggested adding a requirement for a parent signature prior to an IEP going into effect. The commenter reasoned that a signature requirement would foster greater</p>	<p>OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing a new requirement for parent signatures prior to an IEP taking effect. OSPI believes such a requirement has the potential to delay the implementation of services that are not in dispute to an eligible student.</p>

<p>cooperation and minimize the need for costly and time-consuming disputes.</p>	
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<p>V. WAC 392-172A-03110. Development, review, and revision of IEP.</p>	
<p>1. One commenter expressed concerns about how IEP teams consider the communication needs of eligible preschool students who are deaf/hard of hearing under WAC 392-172A03110(2)(a)(iv). The commenter explained based on their experience that many IEP teams do not have the training in deaf/hard of hearing testing and compare students with hearing students when completing an evaluation. The commenter also provided an example of how an IEP team was not aware of the full continuum of placement options for a deaf/hard of hearing student.</p>	<p>OSPI appreciates the feedback provided and is committed to providing ongoing guidance, training, and technical assistance to school districts in partnership with the Washington Center for Deaf and Hard of Hearing Youth (CDHY).</p>
<p>2. One commenter advocated for including changes that require IEPs and any written documents amending or modifying the student’s IEP to be translated to the parent’s native language. The commenter also requested that the rules state that, upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated including a translated copy of the IEP in the parent’s native language.</p>	<p>OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on school districts within the rules for the provision of special education services on translating specific documents. Any disputes regarding the accessibility and translation of vital documents can be resolved under existing school district policy and dispute resolution mechanisms related to the Equal Educational Opportunity Act and Title VI of the Civil Rights Act of 1964.</p>

<p>W. WAC 392-172A-04000. Definition of parentally placed private school students.</p>	
<p>1. One commenter opposed the proposed insertion of the term</p>	<p>See response F-1.</p>

<p>“nonprofit” before the term “private school” throughout the chapter because they believed this change would limit private placements by a local educational agency to nonprofit schools.</p>	
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X. WAC 392-172A-04085. Responsibility of the school district.

<p>1. One commenter requested clarification that nonpublic agencies (NPAs) and similarly-situated schools must report restraint and isolation data directly to OSPI.</p>	<p>NPAs do not have direct access to the state educational data system. The proposed rule thus requires NPAs to report the use of restraint and isolation to the local educational agency responsible for placement and the local educational agency to report such information directly to OSPI. OSPI believes the proposed changes regarding data reporting for the use of restraint and isolation at NPAs sufficiently addresses the commenter’s concerns.</p>
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Supplemental Comment

<p>S1. One commenter expressed support for the proposed changes and suggested additional language to (1) ensure that an NPA does not require parents to sign consent to an Emergency Response Protocol or other physical management policy as a condition of admission; and (2) include data collection for schools run by Educational Service Districts (ESDs).</p>	<p>Placement at an NPA is a decision made by an IEP team and local educational agencies have a responsibility under this section to ensure that any contract for admission to a NPA includes safeguards such as parental consent for the use of Emergency Response Protocol. OSPI believes the proposed language is sufficient to ensure that parents retain all procedural safeguards regarding consent to Emergency Response Protocol when placement is made at an NPA.</p> <p>This section of the rules for the provision of special education services also does not apply to school sites administered by ESDs because such sites do not meet the definition of an NPA. The sections of the rules for the provision of special education services relevant to the use of restraint and isolation, including data reporting to OSPI, are already generally applicable to school districts and other local educational agencies which by definition (WAC Section 392-172A-01115) includes schools run by ESDs.</p>
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<p>S2. One commenter expressed support for the proposed changes and shared ongoing concerns</p>	<p>OSPI appreciates the feedback provided and is currently in the process of refining and improving data collection efforts on the use of restraint and isolation and expects</p>
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<p>about the inability to disaggregate restraint and isolation data that is specific to NPA school settings.</p>	<p>to be able to disaggregate data by specific NPAs, as reported by school districts and local educational agencies, in the future.</p>
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<p>Y. WAC 392-172A-04090. Application requirements for nonpublic agency approval.</p>	
<p>1. One commenter proposed restricting the language in the proposed new subsection (3) to specific provisions or putting more process into this step so that student protections aren't eroded. The commenter stated that there are important provisions in this section, and it would be of concern to waive them.</p>	<p>OSPI agrees with the commenter's suggestion and has revised subsection (3) to read: "(3) OSPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval under this section, <u>and provide an indication of a change to the approval requirements for any nonpublic agency on the list of currently approved nonpublic agencies available to the public maintained on the OSPI website.</u>"</p> <p>OSPI received no supplemental comments on this revised language.</p>

<p>Z. WAC 392-172A-05001. Parent participation in meetings.</p>	
<p>1. One commenter stated that they felt the proposed rule change regarding observing proposed placement options was redundant and unnecessary. The commenter pointed out that in the proposed rule change regarding recording meetings, there is no mention of who is responsible for recording the meeting, the method of recording, the storage method for the recording, nor the timeline for preserving the recording within the formal educational record. The commenter raised questions about liability and the responsibility to protect the recording from physical tampering. The commenter also felt that the proposed rule regarding the possibility of recording meetings would be unduly burdensome on smaller school districts.</p>	<p>OSPI believes the proposed rules clarify the options parents have for participation in the special education decision-making process. Existing school district policy and current state law will guide school districts in responding to parent requests to observe classrooms and audio/video record meetings. All school districts, regardless of size, can develop and adopt policies that reflect the needs of its community. Any recording created at a meeting related to the provision of special education services to a student should be preserved and maintained as an "educational record" in accordance with the Family Educational Rights and Privacy Act (FERPA). The Washington Office of the Secretary of State provides records retention schedules applicable to the educational records maintained by school districts.</p>

<p>2. One commenter suggested that the word "observe" may need clarification and a possible definition. The commenter expressed doubt regarding how to "observe" a proposed placement?</p>	<p>The word "observe" is used in the proposed rule within its commonly understood meaning. Any specific meaning regarding the word "observe" will depend upon the context of the request being made by a parent who wishes to learn more about proposed placement options for a student. OSPI believes further definition is not needed at this time.</p>
<p>3. One commenter stated they did not support the proposed changes because of the phrase "parents may request" which to the commenter means school districts still have the right to have district policies that do not allow recordings. The commenter believes the propose rule is a slippery slope and will only make things more divisive and, as it is, parents already have the right to request recording meetings.</p>	<p>Parents may not always be aware of their ability to make a request to record a meeting related to the provision of special education services and there may be school districts that do not have a policy for considering such requests. OSPI believes, on balance, based on feedback received from the community and the field of special education professionals, that the proposed rule is necessary to clarify the options parents have for participation in the special education decision-making process and encourage school districts to examine its existing policies related to parent involvement and overall family engagement.</p>
<p>4. One commenter proposed adding the phrase "if requested, the District must permit classroom observations during regular classroom hours during in class instruction time" to subsection 2(e). The commenter also proposed revising subsection (5) to state that "Districts must obtain consent from the parents to record any meeting and said recording recording(s) must be made available to the parents upon request" and that "All Evaluations and IEPs must be provided to the Parents at least seven (7) days ahead of any proposed meeting. And said documents, once sent to the parents cannot be altered, amended or edited or changed in</p>	<p>OSPI appreciates the proposed additional language. The proposed rules, however, clarify the options parents have for participation in the special education decision-making process and that flexibility is needed for school districts to develop and revise policies that guide its response to parent requests to observe classrooms and record meetings. Parents currently have a right to access educational records under WAC Section 392-172A-05190. OSPI also declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing new requirements on school districts within the rules for the provision of special education services to provide draft documents in advance of meetings.</p>

<p>any way except by the team at that respective meeting.”</p>	
<p>5. One commenter offered multiple suggestions for changes to the proposed rule under subsection (5). The commenter suggested revisions to (1) state that a parent “or a student” may request consent to record a meeting in order to promote self-advocacy skills and independent living and (2) remove the word “consent” because it creates ambiguity about parental rights. The commenter also offered suggestions for collecting data about the purpose and effectiveness of the various special education dispute resolution options.</p>	<p>The IDEA provides certain procedural safeguards to the parents of a minor child. Such rights transfer to an adult student once the student reaches the age of 18. OSPI believes the rule is consistent with the rights afforded to parents as defined under the IDEA and Chapter 172A WAC. OSPI also believes use of the term “consent” is consistent with the definition under WAC Section 392-172A-01040 and any applicable state law(s) regarding the recording of meetings (see, RCW 9.73.030). OSPI appreciates the feedback provided regarding data collection. OSPI currently collects and publishes information annually regarding the usage of special education dispute resolution options and is committed to continually improving data collection efforts in the future consistent with the commenter’s suggestions.</p>
<p>6. One commenter noted that they had hoped to see stronger, more affirming language to support the need of parents to gather information, as well as time to process and reflect on it, so that they can be a true member of the IEP team. The commenter claims that parents are being denied reasonable requests to gather vital information and that the regulations need to prohibit unreasonable denial. And, when denials are made, school districts should explain in writing why.</p>	<p>OSPI appreciates the feedback provided and agrees that when a school district denies a reasonable parent request, an explanation should be included in a prior written notice consistent with WAC Section 392-172A-05010. OSPI believes the proposed changes sufficiently clarify the right of parents to participate in meetings regarding the identification, evaluation, educational placement, and provision of FAPE to a student eligible for special education services.</p>
<p>7. One commenter expressed support for the proposed changes and requested further revisions to prohibit unreasonable withholding of consent and unreasonable denials of observation requests.</p>	<p>OSPI believes the proposed changes sufficiently clarify the right of parents to participate in meetings regarding the identification, evaluation, educational placement, and provision of FAPE to a student eligible for special education services. Any conflict over the reasonableness of a school district’s response to a parent request can</p>

<p>The commenter also included a request for more technical assistance from OSPI in this area.</p>	<p>be resolved under the IDEA and Washington state special education dispute resolution mechanisms. OSPI appreciates the feedback provided and is committed to ongoing training and technical assistance to the field on parent participation/involvement in the special education process and family engagement overall.</p>
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Supplemental Comments

<p>S1. One commenter suggested that the rule should be changed to say that “parents have the right to observe their student’s current educational placement, and to observe any educational placement proposed or under consideration...”</p>	<p>OSPI believes the proposed changes clarify expectations for observing proposed educational placements and recording meetings in a manner that sufficiently addresses the commenter’s recommendations without imposing new requirements upon school districts that could potentially contravene existing school district policies and state laws regarding access to school grounds and facilities.</p>
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<p>S2. One commenter pointed out that parents may sometimes require disability-based accommodations that might be different than an interpreter or translation services and requested further clarification in the rules.</p>	<p>OSPI agrees with the commenter’s suggestion. The new proposed section (4) has been revised and amended to read: <u>“(4) For any meeting under this section, including meetings related to a student’s IEP, school discipline, and truancy, in accordance with RCW 28A.155.230, each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including but not limited to:</u> <u>(a) Notifying parents in advance in the parent’s native language of the availability of interpretation and translation services at no cost to the parents;</u> <u>(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and</u> <u>(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student’s family was provided.”</u> at any meeting under this section, including meetings related to a student’s IEP, student discipline, and truancy in accordance with RCW 28A.155.230</p>
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AA. WAC 392-172A-05005. Independent educational evaluation.

<p>1. One commenter asked how parents are to know that it is an option to include the cost of an</p>	<p>The rule currently states that if a school district agrees to an independent educational evaluation (IEE) at public expense, then the school district “either pays for the full</p>
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<p>independent provider attending an IEP meeting if the WAC and Procedural Safeguards do not specifically mention it as an option.</p>	<p>cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent” (WAC Section 392-172A-05005(1)(c)(ii)). The circumstances upon which an IEE at public expense may be requested and the full cost of the evaluation will vary in every instance based on the type of examiner and assessment being selected. OSPI thus believes the current rule sufficiently addresses the commenter’s concern and that further rule clarification is not needed at this time. OSPI will continue to provide guidance and technical assistance, as needed, to the field regarding IEEs.</p>
<p>2. One commenter recommended clarifying language to fulfill the intent that evaluations remain independent of the school district. The commenter offered examples of school districts directing or restricting an IEE. The commenter believes the rule should clarify IEE protections for parents so that parents can have private discussions with the evaluator, manage the evaluation scope, be empowered with information as to the results, and be prepared for discussion at district meetings. The commenter also believes school districts should pay for the evaluator to attend a meeting to review the IEE in order to make sure the IEP team understands the data and evaluation outcomes and efficiently utilizes this information for the student’s IEP. The commenter requested that OSPI add language to clarify that school districts must not interfere in the evaluation process or restrict or direct the scope of the evaluation and welcomed further training and technical assistance to the field.</p>	<p>The rule currently states that if a school district agrees to an IEE at public expense, then it must ensure that one is provided “without unnecessary delay” (WAC Section 392-172A-05005(2)(c)(ii)). The rule currently goes on to further state that “a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense” (WAC Section 392-172A-05005(7)(b)). OSPI thus believes the current rule sufficiently addresses the commenter’s concern and that further rule clarification is not needed at this time. OSPI will continue to provide guidance and technical assistance, as needed, to the field regarding IEEs. Any concern about a school district directing or restricting an IEE at public expense can be resolved under the IDEA and Washington state special education dispute resolution mechanisms.</p>

BB. WAC 392-172A-05025. Procedures for filing a complaint.	
Supplemental Comments	
1. Several commenters proposed that OSPI allow a one-year extension of the community complaint deadline due to the COVID-19 pandemic.	OSPI declines to go beyond the stated intent of both the original CR-102 Notice of Propose Rulemaking (WSR 20-23-116) and supplemental CR-102 Notice of Propose Rulemaking (WSR 21-09-088) to address the commenter’s proposal. More information and specific guidance on recovery services in response to the COVID-19 pandemic are available on the OSPI Special Education website . Other special education dispute resolution options with alternate timelines remain available.

CC. WAC 392-172A-05030. Investigation of the complaint and decision.	
1. One commenter expressed opposition to the proposed rule change; stating that the change from 20 days down to 17 days for the district to respond to a complaint puts school districts in an unfair position. The comment believes the timeline for responding is already tight and further shortening it is unnecessary and will add an unnecessary additional burden on school districts.	OSPI has the responsibility to conduct an independent investigation for each community complaint received. OSPI believes a difference of 3 days to respond is not a substantial change that will create an unreasonable burden upon school districts. The process does allow for extensions of time on a case-by-case basis. The State of Washington also gives school districts a longer amount of time to provide a response to a complaint than many other states.
2. Several commenters opposed the proposed changes to section (5) citing concerns about transparency in determining what is relevant within the community complaint process and the need for complete access to records in order to potentially utilize other available dispute resolution options.	OSPI agrees with the comments submitted and has revised the rule to reflect the original language. Section (5) will continue to read as follows: “(5) The OSPI will review and determine which portions of the district’s or other agency’s response is relevant to the complaint and provide the complainant a copy of the school district’s or other agency’s relevant response to the complaint and provide the complainant an opportunity to reply. If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant.” OSPI received no supplemental comments on this revised language.

DD. WAC 392-172A-05085. Due process hearing request filing and response.	
1. One commenter raised concerns about the proposed change to the word "served" throughout the section. The commenter questions if a parent is filing a request for a due process hearing, then does the proposed language mean that a parent would need to have someone legally "serve" the document; meaning the person "serving" a legal document cannot be the person who initiates the proceeding.	OSPI finds the proposed changes necessary in order to clarify the distinction between simply being in possession of ("receiving") a hearing request and being in receipt of (being "served with") a hearing request that satisfies the requirements of WAC 392-172A-05085(2). The form provided by OSPI on the OSPI Special Education website for requesting a due process hearing identifies multiple options for Certification of Delivery (i.e., "serving") a hearing request upon another party, including hand delivery, fax, or either regular or certified mail.

EE. WAC 392-172A-05105. Hearing decisions.	
1. One commenter asked OSPI to reconsider adding new language to the existing rule that would place limitations upon the ability of an administrative law judge (ALJ) to "rewrite" issues identified within a due process hearing request.	OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing additional requirements upon how an ALJ administers due process hearings and issues a due process hearing decision.

FF. WAC 392-172A-05110. Timelines and convenience of hearings.	
1. One commenter described concerns around the scheduling of due process hearing with ALJs and cited potential conflicts with IDEA.	OSPI declines to go beyond the stated intent of the Notice of Propose Rulemaking (CR-102) by imposing additional requirements upon the administration of due process hearings by ALJs. OSPI, however, appreciates the feedback provided and is working with ALJs to explore how the process of scheduling due process hearings can be improved.

GG. WAC 392-172A-07040. Significant disproportionality.	
1. One commenter suggested adding the use of restraint and isolation to Section (1) describing the data collected annually from	OSPI is unable to add restraint and isolation specifically to the list of data collected annually because restraint and isolation is not included in the federal definition of how significant disproportionality is determined. OSPI, however, is currently in the process of refining and

<p>school districts to determine significant disproportionality.</p>	<p>improving data collection efforts on the use of restraint and isolation and expects to be able to disaggregate data by race/ethnicity in the near future.</p>
<p>2. One commenter expressed support for the proposed changes stressing the importance of working to disaggregate data so policymakers can better understand intersectional issues and dismantle racial bias.</p>	<p>OSPI appreciates the feedback provided.</p>

<p>HH. WAC 392-172A-07045. Suspension and expulsion rates for students eligible for special education.</p>	
<p>1. One commenter requested further clarification by raising questions about whether OSPI's reporting of all incidents of disciplinary removals includes in-school suspensions, out-of-school suspensions, and removing a student from a single class during the day. The commenter also questioned whether removal means missing more than 50% of a single class period.</p>	<p>OSPI's report of all incidents of disciplinary removals for both students eligible for special education services and students who do not receive special education services includes in-school suspensions, out-of-school suspensions, and any classroom removal for any length of time.</p>

<p>II. WAC 392-172A-07060. State special education advisory council.</p>	
<p>Supplemental Comment</p>	
<p>1. One commenter proposed revising the rule to state that a majority of the members of the state special education advisory council (SEAC) shall be individuals with disabilities or parents of students eligible for special education services who are not also employed by a school district, an ESD or OSPI. The commenter explained that this change will maintain the majority voice of individuals with disabilities or</p>	<p>OSPI agrees with the commenter's proposal. Subsection (2)(b) has been amended to read: "(b) A majority of the members of the council shall be individuals with disabilities or parents of students eligible for special education services <u>who are not also employed by a school district, educational service district, or the office of the superintendent of public instruction.</u>"</p>

<p>parents of students eligible for special education services. The commenter believes it is simply not reasonable to assume that school district special education administrators can adequately represent the interests of the majority of individuals with disabilities or parents of students with disabilities.</p>	
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