

June 29, 2007

TO: Interested Persons

FROM: Douglas Gill, Director, Special Education,  
Office of Superintendent of Public Instruction

SUBJECT: Concise Explanatory Statement (RCW 34.05.325)

For Rules Proposed as WSR 07-08-086, published April 18, 2007

WACs: Chapter 392-172A WAC

**REASON FOR ADOPTION:** Amendment of the state regulations is necessary to align state regulations with the federal regulations that implement IDEA 2004. We repealed Chapter 392-172 and developed proposed regulations in new Chapter 392-172A WAC. A new chapter was necessary because of the addition of a number of definitions and procedural changes. We aligned the format of the regulations to more closely follow the federal format. Additionally we reviewed existing state regulations for necessity.

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. The changes (other than editing changes) follow:

We received over 50 written or oral comments addressing a variety of areas. The following address the actions taken in response to the comments received, or the reasons if no actions were taken.

The WAC section citation appears first in the table below. The use of numbers addresses the comments received addressing a particular section.

SUMMARY OF COMMENTS RECEIVED	THE AGENCY CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
General comments:	
Thank you for the use of person first language.	Action taken. In our review of the proposed regulations, we found references to special education students. We have corrected those sections to "students eligible for special education."
There are too many meetings, and too much paperwork.	No action taken. The requirements outlined in proposed regulations for evaluation, eligibility, and IEP development track the requirements in the federal rules.
Filling vacancies with staff meeting highly qualified standards is extremely difficult given the shortage of special education endorsed teachers.	No action taken. The requirements addressing highly qualified standards were adopted in conformance with IDEA and the federal regulations. We have retained the procedures for pre-endorsement waivers and out of endorsement assignments to address the concern.
Would like the numbering system indented for better readability.	No action taken. The numbering system follows state code reviser format and cannot be changed.

Pleased to see RTI implemented in this state. It is a move in the right direction.	No action taken. General comment.
Like the flow and order of the new regulations.	No action taken. General comment.
Like the addition of procedures for ESY.	No action taken. General comment.
<p><b>WAC 392-172A-01005 Purposes</b> The commenter was concerned about the removal of the reference to protections under other federal and state civil rights regulations found in the current WAC 392-172-020 (2). A shortened version of the reference can be found in 01035 (1) (b), but it does not include reference to FAPE under Section 504 of the Rehabilitation Act. Requested that this language be reinserted in this section or 01035 to assure student's rights are protected under all pertinent regulations and that the alignment with the other regulations is clear.</p>	No action taken: The purpose section tracks federal purposes. The reference to other federal state laws was reinserted in 392-172A-01035.
<p><b>WAC 392-172A-01025 and 01030</b> The commenter stated that the requirement for the provision of Assistive Technology (AT) Services be moved more closely to the definitions of AT Devices and AT Services.</p>	No action taken. The 01000 sections are definition sections that align with the federal format. The requirements regarding the provision of AT devices and services are in the general FAPE requirements section.
<p><b>WAC 392-172A-01035 Definitions of child with a disability</b> 1. The commenter noted that special education services are expanded to include some related services. The commenter suggested that any requirements that are not included in the federal definition not be included in state regulations. 2. The commenter stated the definition should reference students in residential schools, school for deaf, blind, etc. 3. Several comments addressed the specific definitions of disabilities: the definition of autism reflects a very narrow range of its manifested effects; specific learning disability should not include non educational terms such as minimal brain dysfunction, and dyslexia included in the definition; prefer the term communication disorder over speech/language impairment; the definition of traumatic brain injury is too restrictive by limiting to external forces. 4. Under subsection (2) (a)(vii) the commenter suggested wording be to specifically reference the Washington Infant Toddler Early Intervention Program's Part C of IDEA Policies and procedures for developmental disabilities and removed reference to eligibility in other categories for children birth to three and suggested adding the term "initial" to the determination of eligibility for Part C.</p>	<p>1. No action taken. The federal definitions allow that related services may be included as specially designed instruction. This issue was reviewed with the state steering committee, with recommendations that state policy stay the same with regard to this issue. The steering committee also reviewed other state requirements that may exceed federal law. Some rules were removed. 2. No action taken. This reference is now in WAC 392-172A-02000. 3. No action taken. The definitions used are the definitions found in the federal regulations, and except for grammatical issues, or areas where specific procedures are required (such as in the developmental delay category) the language tracks the federal definitions. A full and individual evaluation of the student should be conducted regardless of the suspected disability category, with services provided to meet the student's unique needs. 4. Action taken. Under subsection 2(a)(vii), changed the term children to infants and toddlers, and changed the wording in the subsection to: "by the state lead agency" under Part C, to clarify that OSPI is not the lead agency, thus is not the rule making agency for children served under Part C of IDEA. Where regulations address the lead agency for Part C, we are leaving that designation and not specifying the division responsible, designated agencies within that subdivision, in the event that terminology or division changes occur at the lead agency level. Deleted subsection (2) (b) as this references Part B eligibility categories. Did not insert "initial" before eligibility. An evaluation for Part B services is an initial evaluation. 5. Other. Added citations to other federal laws. See comment in 392-172A-01005</p>
<p><b>WAC 392-172A-01040 Consent</b> The commenter's concern was that definition is not clear for revocation, and that parents will</p>	No action taken. This definition tracks the federal definition and specifically states that a revocation of consent is not retroactive.

believe that they can retroactively revoke consent.	
<b>WAC 392-172A-01075 Definition of excess cost.</b> The commenter wondered whether the federal language is consistent with the newly adopted special education full cost accounting model.	No action taken. This definition is consistent with state legislative changes.
<b>WAC 392-172A-01085 Highly Qualified</b> 1. The commenter noted that subsection (3) provides that teachers who are teaching to alternate standards do not have to meet the same criteria. The commenter stated that the state has no alternate standards for special education, thus this language is confusing and misleads educators who feel they do not need to meet the same highly qualified standards in content areas.  2. A commenter noted that subsection (8) and WAC 392-172-04095 fails to reference the need for teachers with a special education endorsement in private schools.	1. No action taken. This subsection addresses teachers who are teaching students who take alternate assessments, as defined under the ESEA. The ESEA has allowed states to determine which students will take alternate assessments. Those alternate assessments would be according to the plan submitted by Title I. Currently the alternate assessment in place for students is the portfolio. Issues of what a teacher needs to meet a highly qualified standard should be addressed through the district.  2. Action taken. Teachers in private schools where parents have unilaterally enrolled their children do not need to meet highly qualified standards. The last sentence is clarified to make clear that private schools that are approved as non-public agencies and serve children placed by districts for the provision of FAPE must have staff who meet state certification standards which include an endorsement in special education.
<b>WAC 392-172A-01115 Local Educational Agency</b> 1. Commenters noted a typographical error the end subsection of (1). The last sentence should address kindergarten through grade 12.	1. Action taken. Corrected typographical error to specify that a local education agency is one with administrative control over any combination of grades K-12.  2. Other. Deleted the word, ESD in subsection (2) and added a cross reference to the definition of public agency in subsection (3) for clarity.
<b>WAC 392-172A-01135 Part-time enrollment</b> The commenter noted an incorrect cross reference to 28A.250.350.	Action taken. Corrected to the correct citation to 28A.150.350, and clarified that the student would be enrolled for special education services.
<b>WAC 392-172A-01190 Definition of Transition Services</b> The commenter suggested retaining prior regulatory language by inserting the term “specially designed” in front of “instruction” at (1)(b)(i).	No action taken. This definition is consistent with the federal definition. Transition services include the provision of specially designed instruction, but can also include instruction in general education courses, that are necessary to allow the student to meet his or her post secondary goal.
<b>WAC 392-172A-02000 Student’s right to FAPE</b> Some commenters expressed concern with the word change in subsection (2)(a) from a determination that a student no longer needs special education to a determination that a student no longer is eligible for special education. Does this mean that the reevaluation reestablish initial eligibility?	No action taken: The wording used is federal language. Reevaluations can be completed using existing data, if the group determines that additional assessments are not needed. Eligibility for special education always requires the presence of a disability, adverse educational impact, and need for specially designed instruction. Data establishing the disability are often part of the initial eligibility determination. If, however, there is a question at reevaluation about the continuing presence of a disability, adverse educational impact or need for specially designed instruction, the evaluation group would need to determine what additional information is needed.
<b>WAC 392-172A-02030 Physical education</b> The commenter questioned subsections (2)(a) and (4) (regarding students who are enrolled full time in a separate facility) and wondered if they were contradictory.	No action taken. This regulation is unchanged from prior versions. Subsections (2)(a) and (4) refer to students who are in a separate facility that does not have a general education physical education program. In such cases, students must have access to physical education services.
<b>WAC 392-172A-02040 Child find</b> Several commenters addressed the inclusion of the ages of children with a disability (3-21) and	Action taken. The reference to the ages of children, (3-21) has been removed, and federal language addressing the child find activities for students with a suspected disability is reinserted. A

<p>suggested that adding a specific age reference does not meet federal intention. One stated that this language removes child find responsibility for students who will be turning three. Also traditionally, the commenters noted, schools partner in the child find process for infants and toddlers 0 to 3.</p> <p>Another commenter stated that Part C did not have resources to do evaluation activities and suggested reinstating language requiring evaluation of children birth to 21.</p>	<p>final sentence is added that districts conduct child find activities for infants and toddlers, consistent with procedures established by the lead agency for Part C, given the state requirement for all districts to participate in providing services for infants and toddlers by 2008, under the lead agency for Part C’s established procedures.</p> <p>The federal language removed age references for child find activities. Federal law and implementing regulations for Part C require that Part C have child find procedures that are comparable to Part B. While that process should be coordinated with Part B, these regulations implement requirements for Part B. District requirements for child find activities for infants and toddlers should be addressed through the lead agency with the authority to implement those procedures. With regard to the comment regarding Part C resources, Part B funding is not available for a student until eligibility is established.</p>
<p><b>WAC 392-172A-02080 Transition of children from the Part C to Part B Program</b></p> <p>1. A commenter suggested that language from former WAC 392-172-176 (at discretion of all parties to convene a meeting up to six months prior to transition) be reinstated.</p> <p>2. Another commenter suggested that language in subsection (2) be changed from the designated lead agency for Part C to the designated ITEIP Local Lead Agency.</p>	<p>1. No action taken. The language in the current regulation requires planning to begin at least 90 days prior to a student transitioning from Part C to Part B. Nothing prohibits planning to begin earlier.</p> <p>2. Action taken. Changed “designated” to “designee” of the lead agency for Part C. See earlier comments regarding not specifying the specific division within the lead agency.</p>
<p><b>WAC 392-172A-02090 Personnel qualifications</b></p> <p>Several commenters addressed concern with the lack of specific standards for educational interpreters. Some suggested that the Professional Educators Standards Board establish requirements for interpreter standards. Others suggested that interpreters meet ESA certification requirements. Some of the commenters noted their committee work and recommendations to the legislature at legislative request. The commenters recommended that language be included adopting the recommendations presented to the legislature or adopt language requiring districts to work with agencies with the capacity to provide assistance to the districts.</p>	<p>1. No action taken. We agree that specific certification standards should be addressed through the Professional Educator Standards Board. Absent legislative authority, we do not believe we are authorized to set the specific standards for any particular group of educational providers within these regulations. We will forward all comments regarding this issue to the Professional Educators Standards Board. Districts must make sure that persons they hire can provide the services for which they are hired.</p>
<p><b>WAC 392-172A-03000 Parental consent for evaluations and services</b></p> <p>1. A commenter stated that clarification is needed when a parent or teacher requests a reevaluation. Section 1(f) states a school district does not violate its child find obligation or its evaluation/reevaluation procedures if it declines to pursue the evaluation. However WAC 392-172A-03015 requires a reevaluation whenever the district determines educational needs warrant a reevaluation, or if the parent or teacher requests a reevaluation. Another commenter found parental consent for evaluation confusing when a district</p>	<p>1. Action taken. Subsection (f) was clarified by adding a cross-reference that explains that a district does not violate its child find obligations when a parent refuses to provide consent. This section and the other sections regarding initial or reevaluations, must be read together. In addition, district evaluation groups and IEP teams always need to make decisions regarding requests, and respond to those requests using prior written notice which explains the basis for districts’ proposals or refusals. The issue of responding to an evaluation request when using a Response to Intervention (RTI) process is addressed in that section.</p> <p>2. No action taken. Reasonable efforts are the same as defined</p>

<p>implements response to intervention.</p> <p>2. A commenter requested the definition of “reasonable effort”, referenced in subsection (3)(d)(i).</p> <p>3. Another commenter requested a reminder that consent be provided in the native language or other mode of communication.</p>	<p>when inviting parents to IEP meetings. The cross-reference to what constitutes reasonable efforts is at subsection (4)(d) of this section.</p> <p>3. No action taken. Consent is defined at 392-172-01040 and requires that it be provided in the person’s native language or other mode of communication.</p>
<p><b>WAC 392-172A-03005 Referral and timelines</b></p> <p>1. Several commenters requested that the regulations retain current referral language allowing referrals from any source. The concern was that the language as stated would limit referrals for some students, including highly mobile students.</p> <p>2. Others requested that the language requiring referrals to be in writing be reinstated.</p> <p>3. Another commenter suggested that the requirements under 392-172A-03055(5) created a potential conflict between the requirement for a prompt evaluation and the ability under this section to review documentation in order to make a decision regarding evaluation.</p> <p>4. A commenter requested clarification for timelines for initial evaluations when students move from one district to another.</p>	<p>1. Action taken. The phrase, “other persons knowledgeable about the student” has been added. Districts continue to have child find obligations, so when information about a student with a suspected disability is provided through those child find processes, they should document the information and initiate a referral process.</p> <p>2. Action taken. The requirement that referrals be in writing is reinstated. Please see notes above reminding districts that the initiation of a referral may need to occur by the district itself, when it has information regarding a student who may need an evaluation through its child find process.</p> <p>3. No action taken. This is addressed under 392-172A-03055(5) which now provides a cross reference to this section.</p> <p>4. No action taken. The requirements allow an extension of the timelines when a district is making progress towards completing the evaluation. The specific needs for additional time would depend upon the particular circumstances, including where the prior district was in the evaluation process, and whether the new district needs to conduct additional assessments.</p> <p>Other. Reevaluations were removed from the title. This section addresses initial evaluations.</p>
<p><b>WAC 392-172A-03010 Screening not an evaluation</b></p> <p>The commenter wanted clarification on the difference between a screen and an evaluation.</p>	<p>No action taken. The screening in this section specifically notes that a screening is to determine appropriate instructional strategies for curriculum implementation.</p>
<p><b>WAC 392-172A-03015 Reevaluations</b></p> <p>1. A commenter thought that the limit of an evaluation to not more than once a year potentially creates a problem, for example with a transfer student.</p> <p>2. A commenter urged retention of language regarding an agreement that a reevaluation is unnecessary, however another asked how that determination is made.</p>	<p>1. No action taken. While this may create potential problems, it is new federal language. Parents and districts can always agree to conduct a reevaluation sooner.</p> <p>2. No action taken. This language is new federal language. The determination of whether a reevaluation is unnecessary would depend upon the needs of the student and should be determined on a case by case basis.</p>
<p><b>WAC 392-172A-03020 Evaluation Procedures.</b></p> <p>1. A commenter suggested that language allowing use of professional judgment when properly validated tests are not available be reinstated.</p> <p>2. A commenter was concerned that implicit in evaluation procedures is that a school is capable of conducting a complete evaluation, when in some cases (such as EBD) school psychologists do not have the same training, or</p>	<p>1. Action taken. This was erroneously deleted and is reinstated in subsection (3) (a) which addresses the use of properly validated tests.</p> <p>2. Action taken. The group of qualified professionals is selected by the district and this was clarified in subsection (2). However, the procedures require that professionals be used who can conduct assessments. The district is also required to use outside professionals when necessary to conduct a full and individual evaluation. Parents have procedural protections, including</p>

<p>meet the same requirements as licensed psychologists.</p>	<p>requesting independent education evaluations when they do agree with the evaluation conducted by the district.</p>
<p><b>WAC 392-172A-03025 Review of existing data</b>  Commenters raised similar questions about the language regarding eligibility as is noted in 02000(2)(a) using the phrase, “whether the student continues to meet eligibility.” One suggested a change to a phrase such as “continues to require specially designed instruction.”</p>	<p>No action taken. See comments under 392-172A-02000 The phrase used is federal language.</p>
<p><b>WAC 392-172A-03040 Determination of eligibility.</b>  1. Several commenters noted that the use of the term EALR was too broad when referencing grade level standards.  2. A commenter was concerned that when making a determination, subsection (3) (a) did not include mental/emotional health and noted that many of the diagnoses that qualify for special education fall well within neuroscience.</p>	<p>1. Action taken. We have replaced the term EALRs, with the state’s grade level standards. This change is made in all sections addressing a student’s grade level achievement.  2. No action taken. The language directs the evaluation group to draw from a variety of sources, and use the term “including”. The term include is defined in our regulations, and means that all items named are not all the possible items covered.</p>
<p><b>WAC 392-172A-03045 Use of RTI</b>  1. The commenter was pleased that RTI is being implemented for students who may have a specific learning disability and believes that RTI use should also be permitted for students who may be eligible using the EBD category.  2. A commenter noted that this section cites two ways of determining a learning disability: RTI and severe discrepancy process, but, there are three qualifiers in 392-172A-03055 that include a pattern of strengths and weaknesses.  3. One commenter questioned whether use of the phrase, “a combination of both,” mean that a district can phase in an RTI model, or develop an alternative method which combines both options?</p>	<p>1. No action taken. While this section focuses on learning disabilities, behavior issues can appear to be a primary issue for a student with a learning disability. RTI can be a way to rule out an emotional/ behavioral disability. RTI data may also be used as part of a comprehensive evaluation when determining eligibility under the emotional/behavioral disability category.  2. No action taken. Several commenters noted this issue in comments addressing WACs 392-172A-03055 and 03080. We have addressed the linkage issue in those sections.  3. No action taken. The term is used because the process of building an appropriate RTI system may take districts several years. Some may start at a building level, and some may start with the use of the process for one subject area. The intention is to allow districts to phase in RTI.</p>
<p><b>WAC 392-172A-03050 Evaluation group for SLD</b>  A couple of commenters noted that the evaluation group could be composed of a group that does not include special education representation. Another noted that the issue was the title, as these are additional group members for SLD.</p>	<p>Action taken. The title has been clarified to note that these are additional group members.</p>
<p><b>WAC 392-172A-03055 SLD determination</b>  1. Several commenters stated that EALRs do not contain grade level information and suggested replacement of the term.  2. Another commenter was concerned that WAC 392-172A- 03055 (3)(c) ruling out an emotional or behavioral disability is not so easily done.  3. Commenters noted that having a</p>	<p>1. Action taken. The term EALRs has been replaced with the term state grade level standards.  2. No action taken. This has been a long standing requirement. Evaluations should be comprehensive enough to address all areas of suspected disability, whether or not it is linked to a specific eligibility category.  3. Action taken. This subsection has been modified so that in</p>

<p>determination linked to a pattern of strengths and weaknesses is confusing, given that the two eligibility methods are RTI or severe discrepancy.</p>	<p>determining whether a student has a specific learning disability using RTI or a severe discrepancy model, the group may consider a student's patterns of strengths and weaknesses as part of the determination.</p> <p>Other. In response to the concerns regarding timelines, subsection (5) contains a cross-reference to the timelines for referral and evaluation.</p>
<p><b>WAC 392-172A-03060 Process based on RTI</b></p> <p>1. Several commenters noted that the requirement in subsection (1)(a) which stated "at least two or three" is redundant. One commenter suggested using one or the other. Some suggested two screens, and others suggested three screens.</p> <p>2. Commenters requested that we cross-reference the definition for research based intervention.</p> <p>3. A commenter stated that if there were no core curriculum for a subject area, that eligibility would be impossible for that content area. Another suggested that "a high quality core curriculum "be one that meets the needs of 70-80% of the students upon screening."</p> <p>4. Other commenters requested clarification of data points, and questioned the use of a specific number. Some were concerned that this could be applied in a way that would not give a district sufficient time to determine whether a student was responding to an intervention.</p> <p>5. A commenter asked whether the regulations could outline how "intellectual development" is factored into the eligibility question of LD under the RTI model.</p> <p>6. A commenter noted that the reference to the RTI manual is a statement and suggested that if this is the state standard, it be clear that these procedures are to be followed.</p>	<p>1. Action taken. (1)(a) has been clarified to require at least three universal screens or benchmarks.</p> <p>2. Action taken. The cross-reference has been added in subsection (1)(b).</p> <p>3. Action taken. (1)(c) has been modified to state that the core curriculum is designed to meet the needs of all students. The core curriculum is the basis for determining which students, despite effective instruction in the curriculum, need interventions.</p> <p>4. Action taken. 2(c) was clarified to address the need for a sufficient number of data points below the student's aim line be documented in order to determine whether or not the student is making progress, or needs more intensive interventions.</p> <p>5. No action taken. Educators cannot rely on a single procedure as the sole criterion for determining eligibility for special education services. Therefore, intellectual development, like RTI, is one component to be considered by a student's evaluation group when looking at eligibility for special education services.</p> <p>6. Action taken. The guidelines in the manual are for districts to use when developing their procedures. This section describes the minimum state procedures for districts to develop RTI models. The manual developed by the state give districts recommended guidelines, based on research, for developing their own procedures. Clarifying language in subsection (1) (g) was added to address decision making as part of the state's procedures.</p>
<p><b>WAC 392-172A-03075 Observation of students</b></p> <p>A commenter noted observation alone does not sufficiently address assessment of the behavior and academic performance and there is a need for a more structured observation/interview procedure to assess the academic learning environment.</p>	<p>No action taken. This observation requirement is a new federal requirement. Observation is only one component of the eligibility determination. Evaluation groups may determine that a more structured procedure is necessary, depending on the student, or upon the classroom environment.</p>
<p><b>WAC 392-172A-03080 SLD documentation</b></p> <p>Commenters raised the same issues with using the term EALR and patterns of strengths and weaknesses.</p>	<p>Action taken: Cross-referenced report requirements to the evaluation report, changed the term "EALR" to state grade level standards, and clarified that the student's patterns of strengths and weakness are addressed when the evaluation group uses this information as part of an eligibility determination using the RTI process or a severe discrepancy model.</p>

<p><b>WAC 392-172A-03090 IEP contents</b></p> <p>1. Several commenters were concerned about the removal of the requirement that IEPs contain short term objectives. Some felt that especially for preschoolers, objectives assisted in measuring progress, given how quickly their needs change. Others felt the objectives provide the outline of interventions for teachers, students and parents, and without them parents will not be aware of a student's lack of progress in a school year, until it is too late in the year.</p> <p>2. One commenter asked what is meant by the phrase, "use of peer reviewed research to the extent practicable" in subsection (1)(d).</p> <p>3. Several commenters requested that the regulations maintain the requirement that transition planning begin at age fourteen.</p>	<p>1. No action taken. IDEA removed the requirement that objectives be included in all IEPs. Districts are not precluded from including objectives, and must use them for students who will be taking alternate assessments. Districts are required to report on a student's progress towards annual goals at least as often as non-disabled students receive progress reports or report cards.</p> <p>2. No action taken. This terminology is consistent with federal language. The federal analysis of comments to the federal regulations, state that the term "to the extent practicable," generally means that services and support should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research.</p> <p>3. No action taken. The requirement for planning to begin at 14 was removed from IDEA. The current regulations require that transition services are addressed in the IEP that is in effect when the student turns 16, and further requires that transition services be based upon assessments of the student. Given these requirements, transition planning for the student must begin prior to the student turning 16.</p>
<p><b>WAC 392-172A-03095 IEP team membership</b></p> <p>1. Commenters suggested (1)(d)(iii) should include language that the team member be knowledgeable about the availability of resources and able to commit the district resources.</p> <p>2. Another commenter suggested that subsection (6) specifically reference ITEIP's designated Family Resources Coordinator or other representatives as defined by locally required Part C written agreements.</p>	<p>1. No action taken. The language regarding this team member requires knowledge of resources. IEP teams make decisions at meetings. If a district needs to send a member who is able to commit resources as part of the decision making process, then they need to make sure that person is present at the meeting.</p> <p>2. Action taken. The language is changed to state that other representatives are included "as specified by the state lead agency for Part C." The designation of specific persons or references to required agreements under Part C should be addressed through procedures established by ITEIP.</p>
<p><b>WAC 392-172A-03100 Parent Participation</b></p> <p>1. The commenter requested changes to clarify (3)(b) make changes to use the terminology under the Part C state lead agency procedures.</p> <p>2. The commenter stated that this section should include language regarding requiring that the parent be notified in the native language or other mode of communication.</p>	<p>1. Action taken. Changed subsection (3) (b) to clarify that designated representatives are specified by the state lead agency for Part C, under their procedures.</p> <p>2. No action taken. The language in this section tracks federal language. The regulation requires that parents understand the proceedings at the IEP meeting. It is assumed that districts need to notify parents in their native language or other mode of communication in order to ensure their participation.</p>
<p><b>WAC 392-172A-03110 Development, review and revision of an IEP</b></p> <p>1. One commenter noted that the language relating to amendments was not specific enough to address what could be accomplished. Could the amendment drop services?</p> <p>2. Another commenter noted that (2)(c) implied that the district can make changes and notify the IEP team. The commenter suggested that this subsection be clarified to say that the IEP team that makes changes to an IEP. Also the commenter stated that (2)(d) should not require the parent to request the IEP.</p>	<p>1. No action taken. Amendments can occur between annual meetings. This requirement cannot be read in isolation of other requirements, such as the need for a reevaluation.</p> <p>2. No action taken. This language is specific to the process for an amendment of an IEP without all IEP team members. The language in 2(d) allows creation of an amendment document, without revising the entire IEP, unless the parent requests that the IEP be revised.</p>

<p><b>WAC 392-172A-03120 03125 Aversive Interventions Section Title</b> The commenter suggested that the section should be entitled "Positive Behavior Interventions."</p>	<p>No action taken. WAC 392-172A 03020-03025 address requirements to be followed when an IEP team determines the need for aversive interventions.</p>
<p><b>WAC 392-172A-03125 Aversive Intervention prohibitions</b> Commenter suggested that the listing of prohibitions be removed, and that a cross reference to RCW 9A.16.100 is sufficient.</p>	<p>No action taken. We have retained the language in 9A.16.100, so that readers do not need to access that information separately.</p>
<p><b>WAC 392-172A-03135 Aversive Interventions</b> The commenter suggested adding a requirement that the need for aversive interventions be addressed in the present levels of academic and functional performance.</p>	<p>No action taken. IEP teams are already required to consider behavior as a special factor, and required to address aversive interventions as part of the IEP.</p>
<p><b>WAC 392-172A-04000 Definition of parentally placed private school students</b> The commenter suggested that this section include information about students who are enrolled full or part time for purpose of receiving special education services. The recommendation is that because parents are entitled to part-time enroll for services through state law, this section should make clear that a student enrolled part time is entitled all rights and protections under this chapter.</p>	<p>No action taken. The information regarding part-time enrollment is contained in Section 392-172A-04010.</p>
<p><b>WAC 392-172A-04010 Services for parentally placed private school students</b> The commenter stated that subsection (1) needs clarification that this would only apply to students who are part-time enrolled for the receipt of special education or related services, and not for a parent enrolling a student part time in a general education class.</p>	<p>Action taken. Clarified that subsection (1) applies when parents part-time enroll their children for special education and/or related services.</p>
<p><b>WAC 392-172A-04040 Equitable services</b> The commenter noted a typographical error in (6). It should read non-secular.</p>	<p>Action taken. This has been corrected.</p>
<p><b>WAC 392-172A-04075 Services on sectarian sites</b> Two commenters questioned the prohibition of services, equipment or materials on the site of a religious school. One noted that other federal funds, such as Title One allow services on site. Concerned that this creates a conflict when same student might be eligible for both Title and special education programs.</p>	<p>No action taken. This issue has been reviewed by the attorney generals office. The state constitution and articles specifically address education and religion. State court cases interpreting the meaning of the constitutional language have strictly applied the separation between schools and sectarian private schools. IDEA allows services on site of a religious school to the extent it is consistent with state law. Other federal programs specifically dictate the use of federal funds. A free appropriate public education is available to students enrolled in public schools. Services to student's enrolled in private schools are determined through consultation and in consideration of the district's proportional share of federal funding. Students enrolled in religious schools are part of this process. This regulation does not prohibit services for these students, but does address the constitutional issues regarding the location of the services and materials.</p>
<p><b>WAC 392-172A-04085 Responsibility of the school district</b> 1. A commenter suggested that language contained in former WAC 392-172 be</p>	<p>1. No action taken. The list of terms in an agreement is not exclusive. In addition, subsections (2)- (5) make clear that students placed by school districts in non-public agencies retain all of the protections under this chapter.</p>

<p>reinstated, that specifically requires a district include as part of the agreement its responsibility for due process hearings when a district places the student in the non-public agency.</p> <p>2. Another commenter stated that teachers employed in non-public agencies should meet highly qualified requirements required of public school teachers.</p>	<p>2. No action taken. The federal rules made clear that teachers in private schools including schools where districts place a student for the purpose of receiving FAPE, are not required to meet highly qualified requirements under ESEA. NPAs must have a certificated teacher with a special education endorsement.</p>
<p><b>WAC 392-172A-04095 Application requirements for non-public agency approval</b></p> <p>1. One commenter noted that the section title was missing the word “approval”.</p> <p>2. Several commenters noted that subsection (1) fails to reference the need for certificated special education teachers in private schools approved by the state board.</p>	<p>1. Action taken. The word, approval, was reinserted in the title.</p> <p>2. Action taken. Language in (1) was added to address the need for staff meeting professional educator standards board standards for special education.</p>
<p><b>WAC 392-172A-04110 State responsibility for placements</b></p> <p>The commenter suggested that language regarding district responsibility for FAPE be reinserted in this section.</p>	<p>No action taken. District responsibility for FAPE is located in WAC 392-172A-04085 under responsibility of the school district.</p>
<p><b>WAC 392-172A-05000 Opportunity to examine records-Parent participation in meetings</b></p> <p>Suggest these be broken into two separate sections.</p>	<p>No action taken. This regulation tracks the federal regulation, placing these two subsections together.</p>
<p><b>WAC 392-172A-05005 IEE</b></p> <p>The commenter raised questions regarding who is not employed, and wondered whether that would include a substitute, retire/rehire employee or a consultant. The commenter also questioned whether a separate IEE request could be made in each area a student was evaluated and how many times a parent could initiate a request.</p>	<p>No action taken. Some of these issues would be subject to a dispute and addressed through a due process hearing. While districts provide parents with a list of independent evaluators, parents are not required to use an evaluator on a district’s list, as long as the person selected by the parent meets the criteria and qualifications. A parent is entitled to one independent evaluation each time the district conducts an evaluation. Again, if parent disagreed with the district’s evaluation in a variety of areas, the issue of the appropriateness of a district’s evaluation, and the areas to be evaluated would be subject to due process, if the district believes its evaluation is appropriate.</p>
<p><b>WAC 392-172A-05010 Prior written notice</b></p> <p>1. A commenter noted that the words <i>must be provided</i> to the parent of a student eligible are missing from subsection (2).</p> <p>2. Another commenter asked what “clearly not feasible” meant and asked for the definition of other mode of communication?</p>	<p>1. Action taken. The words “must be provided” have been reinserted into this subsection.</p> <p>2. No action taken. This language regarding clearly not feasible and other mode of communication is long standing language. Clearly not feasible would generally mean that there is no capability of written translation. Other mode of communication would generally mean other types of communication that does not include written communications.</p>
<p><b>WAC 392-172A-05015 Procedural Safeguards notice</b></p> <p>1. A few commenters wondered whether subsection (1)(b) should contain an “or” rather than an “and” when providing procedural notices for state complaints and due process hearing requests.</p> <p>2. Another commenter requested that a notice</p>	<p>1. Action taken. The notice of procedural safeguards must be provided upon a district’s receipt of a state complaint, <u>and</u> the receipt of the first due process hearing request. It is possible that a parent may file both a due process hearing request and a state complaint in the same school year. We added the term receipt of the first due process request for clarity.</p> <p>2. No action taken. IDEA explicitly limited the number of times</p>

<p>of procedural safeguards be provided at reevaluation and every IEP meeting.</p>	<p>the notice of procedural safeguards need to be provided to parents. Parents are provided information on how to obtain additional copies, and they may always request an additional copy.</p>
<p><b>WAC 392-172A-05025 State complaints</b>  1. One commenter noted that there was a comma where there should have been an “or” in subsection (1).   2. A commenter questioned whether the language in (2)(d) should be two years, not one. Another requested that current timelines be retained. For continuing violations and compensatory education.   3. A commenter suggested adding a subsection allowing OSPI to accept complaints that do not meet the requirements of subsection (2), and to add a requirement that requirements be orally explained and persons be provided with a geographically appropriate list to assist persons with filing a complaint.</p>	<p>1. This typographical error has been corrected with the addition of “or other subgrantee.”   2. No action taken. Statutory timelines for due process hearing requests are two years. The timeline for complaints is one year. The purpose of the complaint processes is to encourage early resolution of complaints. The timelines specified by federal regulations are appropriate.   3. No action taken. OSPI requests clarification from complainants when issues are not clear. In addition, complainants are given an opportunity to correct issues they believe are incorrectly stated. OSPI already maintains a list of legal resources, information on dispute resolution, and information about other resources on its website. In addition, there is a state education ombudsperson and a special education ombudsperson available to assist parents. Please also see 392-172A-05045 addressing dissemination of materials addressing dispute resolution.</p>
<p><b>WAC 392-172A-05030 Complaint Investigation</b>  A commenter requested that language be inserted in subsection (9) that corrective actions will be posted on the OSPI website.</p>	<p>No action taken. This information is currently posted. It is not a regulatory requirement.</p>
<p><b>WAC 392-172A-05070 Resolution of a dispute through mediation</b>  The commenter suggested reinstating language that a decision not be in conflict with state or federal law or that a copy be provided to OSPI, and questioned whether subsection (3) was a repetition of (1)(a).</p>	<p>No action taken. The language tracks federal language. Subsection (1)(a) addresses required language in the mediation agreement. Subsection (3) addresses the general rule that the discussions may not be used in subsequent proceedings.</p>
<p><b>WAC 392-172A-05085 Due Process request filing and response</b>  1. The commenter suggested adding a new subsection allowing the ALJ to relax the hearing request requirements and timelines where there is evidence that a person is unable to successfully complete the request in a timely manner due to language barriers or extenuating circumstances. Also suggested adding language requiring the ALJ to refer the person to a list of geographically appropriate advocacy groups to assist the person with successfully completing the process.   2. A commenter also suggested a rule be implemented requiring OSPI to call parents when they do not meet timelines.</p>	<p>1. No action taken. The timelines established under IDEA were explicit. In addition, the regulations should not dictate ALJ rulings on matters subject to prehearing motions. A list of legal resources is already required, and is provided to parents by the Office of Administrative hearings when a due process hearing request is filed.   2. No action taken. Administrative hearings are conducted by the Office of Administrative Hearings. OSPI does not participate in the hearings.</p>
<p><b>WAC 392-172A-05090 Resolution Process</b>  A commenter suggested that subsections (2)(c) and (d) are of concern because they are unfriendly to parents. They suggested that parents should not be penalized if they do not want to go to a resolution meeting.</p>	<p>No action taken. IDEA requires a resolution session as a precondition to a due process hearing when parents file a due process hearing request. Parents and districts may agree to waive the resolution session. In addition there are provisions for the hearing to proceed when a district fails to convene the resolution session.</p>

<p><b>WAC 392-172A-05100 Hearing Rights</b>  The commenter believed that subsections (1) (c) and (d) are of concern because of strict timelines for disclosure of evidence and suggested that the regulation include a provision granting the administrative law judge discretion to allow parents to introduce evidence not provided to the other parties within the timeline.</p>	<p>No action taken. The timelines for the provision of evidence to the other party allows the other party minimal time for preparation prior to the hearing. The rule is applied equally to both parties. In addition, (2)(b) allows an administrative law judge to bar the introduction of later produced evidence. Extenuating circumstances that would prevent the production of evidence to another party would be addressed by the ALJ. Parties may also request an extension of time for the hearings not involving expedited disciplinary matters.</p>
<p><b>WAC 392-172A-05120 Attorneys' fees</b>  The commenter requested clarification of "frivolous or unreasonable."</p>	<p>No action taken. This determination is left to the courts.</p>
<p><b>WAC 392-172A-05125 Student's status during proceedings</b>  The commenter stated concern with the change in wording regarding placement during appeal, and recommended that language be clarified to state that it is the placement on the last agreed upon IEP (unless for disciplinary reasons).</p>	<p>No action taken. This language is the language used in the federal regulations. The terminology of the last agreed IEP would not be correct. There may be times when a district implements an IEP and provides the parent with prior written notice explaining the basis for the proposal or refusal even when a parent does not agree with the IEP. The placement for stay put is the IEP in effect prior to the change, when a parent elects to use due process procedures.</p>
<p><b>WAC 392-172A-05145 Discipline</b>  1. The commenter suggested that the proposed change to a two element test be changed to include the three part test contained in the former regulations, and propose that WAC 392-172A-05145 be amended to include language similar to the existing WAC 392-172-38305 allowing the consideration of appropriateness of a student's IEP when determining if a violation of a school's code of conduct by a special education student was a manifestation of that student's disability.  2. A commenter suggested subsection (5)(a) add additional information that all relevant information reviewed specifically address evaluation and diagnostic results, and add placement review in addition to review of the IEP.  3. A commenter suggested additional language in (5)(a)(ii) in looking at failure of implementation of the IEP to include the "the failure to provide special education services, supplementary aids and services, and behavior intervention strategies consistent with the student's individualized education program and placement."</p>	<p>1. No action taken. The language regarding the elements of a manifestation determination was specifically changed in IDEA 2004.  2. No action taken. The term include, is not exclusive as part of the review. Parent information is included as part of this review.  3. No action taken. The proposed additional language are components of the IEP.</p>
<p><b>WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations</b>  1. The commenter suggested that this regulation should allow the ALJ to grant extensions in expedited hearings. There may be circumstances where the parent or district may wish an extension.</p>	<p>1. No action taken. The timelines for disciplinary hearings are intended to provide for a quick resolution of disciplinary issues, given that a student's placement can be affected. In cases where the underlying disciplinary issues are resolved, and the matter involves issues other than discipline, the ALJ has the authority to determine that discipline is no longer an issue, allowing for the 45 day hearing timeline to apply.</p>

<p>2. The commenter stated that 7 calendar days for a resolution hearing is unrealistic.</p>	<p>2. No action taken. This is the timeline set by federal regulations. Districts and parent may agree to waive the resolution session.</p>
<p><b>WAC 392-172A-05180 Definitions- Destruction of records</b> The commenter suggested reinserting the definition of personally identifiable information in this section.</p>	<p>No action taken. The definition of personally identifiable information is located in WAC 293-172A-01140.</p>
<p><b>WAC 392-172A-05215 Amendment of records and hearing rights</b> The revision provides a cross- reference to 05185 regarding right to a hearing. This should be a district hearing (not due process)</p>	<p>Action taken. The cross reference is an error. Subsection (3) removes the cross reference and states that the hearing is in accordance with district procedures.</p>
<p><b>WAC 392-172A-06015 Maintenance of effort</b> The commenter stated that while intent appears the same, there is no longer reference to non-supplanting. To insure clarity reinstate language that Part B funds can not be used to supplant the district or state obligation to fully fund services.</p>	<p>1. No action taken. The requirement regarding non-supplant is contained in WAC 392-172A-06010.</p>
<p><b>WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years</b> The commenter noted that while regulations incorporates federal language regarding allowable expenditure of funds for early intervening services, the subsection also increases the amount of excess that may be considered as local funding from 20% to 50%. The commenter suggested that unless this is a requirement of IDEA, reinstate 20%.</p>	<p>No action taken. This is the federal regulatory language and will be retained.</p>
<p><b>WAC 392-172A-06040 Nimas/Nimac</b> 1. A commenter noted that the districts coordinated with the Instructional Resources Center and suggested that subsection (2)(c) be changed to “In carrying out this section, the school district must coordinate with the <u>Instructional Resources Center</u>. The Instructional Resource Center will work with the Washington Assistive Technology Act Program and the Special Educational Technology Center to produce and distribute materials  2. A commenter suggested that when a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials by means other than the NIMAC <u>to blind persons or other persons with print disabilities.</u></p>	<p>1. Action taken. The regulation requires a district electing to coordinate with NIMAC work with the Instructional Resources Center. Coordination by the IRC with other state needs agency is not included in this regulation addressing district obligations.  2. Action taken. Subsection (6) includes the language, “by other means.”</p>
<p><b>WAC 392-172A-06050 Public information</b> The commenter noted that the section removes current WAC language regarding information to the public and recommended use of the prior language.</p>	<p>No action taken. This section tracks federal language regarding district requirements for reporting information to the public.</p>
<p><b>WAC 392-172A-07005 Public and private insurance</b> The commenter suggested including clarification from a recent OSEP letter regarding consent for use of insurance.</p>	<p>Action taken. Subsection (2)(d) includes the OSEP clarification that consent is required each time access is sought for a new procedure.</p>

<p><b>WAC 392-172A-07010 Monitoring</b> A commenter suggested that the time frame for monitoring should be reduced from 6 years to three years.</p>	<p>No action taken. The time frame established is a minimum timeframe for an on-site visit. Districts may be monitored more frequently depending upon the results of annual reports they are required to submit to OSPI.</p>
<p><b>WAC 392-172A-07040 Disproportionality</b> 1. Commenters had questions in subsection (2) and (3) (a)-(c) about how inappropriate identification is determined. For significant disproportionality, the commenter noted that state averages are referenced and recommended use district averages. For example: a state average in a category is 5.7, while the district's average is substantially greater, and suggested that the issue should be disproportionality of the special education population to the total population in the district. It is not clear whether all three criteria are met, or whether it is or should be a combination.  2. A commenter noted that suspension and expulsion appears to be missing in the disproportionality under subsection (3) and (4).</p>	<p>1. Action taken. Subsection (2) regarding disproportionality addresses a ratio determined by comparison of students in the district.  Significant disproportionality is determined when a district meets all three factors. Subsection (3)(b) is clarified to address that the weighted risk ratio is based upon district averages.  2. Action taken. The references to suspension and expulsion were erroneously excluded and have been reinserted.</p>
<p><b>WAC 392-172A-07045 Suspension and expulsion rates</b> The commenter suggested that this section should address disproportionality.</p>	<p>No action taken. This is a separate federal reporting requirement. Disproportionality is addressed in WAC 392-172A-07040.</p>
<p><b>WAC 392-172A-07070 State public participation</b> The commenter suggested that this section should also address district responsibility for public participation.</p>	<p>No action taken. District participation is located in WAC 392-172A-06050. Comments regarding that section are addressed above.</p>