

**FINAL REPORT TO THE
LEGISLATURE
ON
SPECIAL EDUCATION
RULES AND REGULATIONS**

DECEMBER 1998

December 15, 1998

TO: Members of the Washington State Legislature
FROM: Dr. Terry Bergeson, State Superintendent of Public Instruction
RE: Final Report on Special Education Rules and Regulations

On behalf of the Office of Superintendent of Public Instruction and our special education staff, I am pleased to present this final report.

The report compares the state's administrative and statutory requirements to provide special education with the requirements of federal law. An overview, analysis, and results of the study are the major components of the report. An executive summary is also provided.

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EXECUTIVE SUMMARY

Final Report on Special Education Rules and Regulations

(1998 Supplemental Appropriations Act, Section 502 (f))

A. Background and Purpose

Special education services are provided to more than 110,000 students in the state of Washington. Students eligible for special education in our state generate nearly \$380 million per year in excess cost (beyond the cost of basic education) state funds, and an additional \$67 million per year in federal funding. Local school districts report spending an additional \$56 million per year on special education-eligible students.

In 1998, the Washington Legislature requested that the Office of Superintendent of Public Instruction (OSPI) prepare a study “which compares the state’s administrative and statutory requirements to provide special education with the requirements of federal law.” A preliminary report was provided to the policy and fiscal committees of the Legislature on October 15, 1998. The final report is provided in accordance with the due date of December 15, 1998. The final report is organized in three major sections. These sections are overview, analysis, and results. Summary observations are included at the conclusion of the report.

Overview

The overview of the report includes a brief history of state and federal legislative activity associated with the provision of special education and is further divided into two areas: studies and related activities. There are four significant studies in special education that have been conducted in Washington during the past decade. The studies have focused on funding and regulatory requirements. Each of the four studies is described and summarized in the report. A number of related activities in the provision of special education services in Washington are also described and summarized in the *overview* section of the report. The related activities range from a legislative request to review and revise the state special education regulations in 1992, to the Legislature’s decision to staff a special education program audit team in the State Auditor’s Office in 1997.

Analysis

The analysis portion of the report provides a description of the administrative structure of special education from the federal to the local district level and presents a parallel structure of statutory and regulatory authority for each level. A description of the state and federally required accountability elements for special education is also included. The analysis section additionally includes a description of the process that was used to compare the current proposed federal rules and regulations for the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 with the current state (chapter 392-172 WAC) rules and regulations for special education. In order to provide a composite picture of the interface between federal and state regulatory requirements, current state rules and regulations were then compared against the proposed federal regulatory language to determine the extent to which state rules and regulations exceeded those at the federal level.

Results

The *results* section of the report utilizes three tables that are included in the appendices for reference purposes. Table A presents a side-by-side comparison of each element in the proposed federal rules and regulations (34 CFR 300) for special education to each element in the current state rules and regulations for special education (chapter 392-172 WAC). There are 52 areas in the proposed federal rules and regulations that are not addressed in the current WACs. The 52 areas are shaded in Table A. In contrasting the state WACs with the proposed federal rules and regulations, Table B identifies nine areas of current WAC that are not specifically addressed in the proposed federal requirements. These nine areas are also shaded. The final table in the report, Table C, provides comment on each of the nine areas of WAC which are not directly referenced in the proposed federal rules and regulations for the IDEA Amendments of 1997.

B. Summary Observations

There are five summary observations of the study. These summary observations are as follows:

- The administrative and statutory structure of special education in Washington contains no more than the essential elements to ensure both the state and federal entitlement for the provision of special education services to eligible students.
- State rules and regulations for special education parallel, but do not broaden the proposed baseline of federal requirements established in 34 CFR 300 in either number or substance. In fact, state rules and regulations would have to add references for at least 52 federal citations in order to be consistent with the baseline of proposed federal regulations in the reauthorization of IDEA.
- While there are a limited number of state rules and regulations in special education that have no direct correlation to the provision of special education services in federal rule, these rules and regulations exist when states need to determine their own unique procedures to implement a federal requirement or to acknowledge other statutory references within the state.
- There are state rules and regulations that are not directly related to either the federal (34 CFR 300) or state (chapter 392-172 WAC) provision of special education services, but do have implications for the provision of special education services. These rules are related to state legislative initiatives for Medicaid recovery and safety net funding on behalf of special education-eligible students, and as such, may contribute to a perception that state rules and regulations exceed those at the federal level.
- Increased activity on the part of the State Auditor's Office in special education since 1997 may have also heightened the awareness of long-standing compliance and accountability issues in special education, thus contributing to an overall concern of excessive regulation.

Purpose and Introduction

The purpose of this report is to respond to a legislative request for “a study which compares the state’s administrative and statutory requirements to provide special education with the requirements of federal law” (1998 Supplemental Appropriations Act). The final report is organized into three major sections. These sections are *overview, analysis, and results*. The *overview* provides an historical perspective of the authorization and implementation of special education in Washington. The *analysis* section of the report is designed to show the relationship of federal to state statutory and regulatory requirements related to the delivery of special education. This section describes the actual comparison of federal and state rules and regulations in an effort to determine the extent to which state rules and regulations for the implementation of special education in Washington either exceed or do not meet the baseline of federal rules and regulations. The *results* section of the report will discuss the federal and state rules and regulations comparison of the analysis section. Compliance with federal special education rules and regulations condition the receipt of federal special education funding in Washington, which is approximately \$67 million per year. Further, failure to comply with federal rules and regulations for special education can jeopardize other sources of federal funding available to the state. Summary observations will follow the results section of the report.

It should be noted that final federal rules and regulations for the implementation of the **Individuals with Disabilities Education Act (IDEA) Amendments of 1997** were not available from the United States Department of Education at the time of this report. Therefore, the comparison of state to federal rules and regulations, which is the basis of the analysis section of this final report, has used the currently proposed federal rules and regulations for comparison purposes.

Overview

Special education services are provided to more than 110,000 students in the state of Washington. Special education-eligible students generate nearly \$380 million per year in excess cost (above the cost of basic education) state funds. An additional \$67 million per year is generated in federal funding, and local districts report spending more than \$56 million on an annual basis for special education-eligible students. The provision of special education in Washington is founded on Article IX of the state Constitution and has been the subject of intense legislative action, study, and related activity for more than 50 years. For example, in 1943, the Legislature passed the **Schools for Handicapped Children Act**. This act created a division for handicapped children at the Office of Superintendent of Public Instruction (OSPI) and directed school districts and teachers to “give such aid and special attention to handicapped children as their facilities will permit” (Washington Session Laws, 1943, p. 280). In 1971, the Legislature passed **House Bill 90**, guaranteeing access to public education for all students. **House Bill 90** has been regarded by many in this state as the forerunner to the federal **Education for All Handicapped Children Act of 1975, (Public Law 94-142)**. Public Law 94-142 applied to all states and created a federal entitlement of special education for eligible students with procedural safeguards for the provision of a free and appropriate education (FAPE) in the least restrictive environment (LRE) under the guidance of an individualized education program (IEP). The current **IDEA Amendments of 1997 (Public Law 105-17)** are, technically, a continuing reauthorization of P.L. 94-142.

In addition to a variety of legislative actions, special education has also been the subject of numerous studies from a number of sources during the past decade. Most notable among these documents is (1) the *1990 Special Education Study*, conducted by the Office of Financial

Management; (2) the 1992 *Standards and Procedures for Safety Net Relief to Washington School Districts for the Education of Students with Disabilities*, conducted by OSPI; (3) *An Overview of Federal and State Statutes Addressing the Education of Children with Disabilities*, a study done for the Legislature by the Washington State Institute of Public Policy in 1994; and (4) *A Special Education Fiscal Study*, conducted by the Washington State Institute for Public Policy and the Legislative Budget Committee in 1995.

Studies

The 1990 *Special Education Study* conducted by the Office of Financial Management concluded with a number of recommendations aimed at fiscal and programmatic reforms. The fiscal reform recommendations included (1) the need to limit charges to the special education program to only those that were created by the categorical nature of the program and (2) develop a noncategorical (no need to label students) funding model. The programmatic reform recommendations called for (1) preparing all professional staff in schools to work with students with a wide range of learning styles and abilities, (2) develop a process to facilitate mediation of disputes between parents and students, (3) include a focus on quality and outcomes in state monitoring efforts by OSPI, and (4) improve consistency in data collection and reporting.

The 1992 *Standards and Procedures for Safety Net Relief to Washington School Districts for the Education of Students with Disabilities* by OSPI was a response to a legislative directive in the 1991–1993 Appropriations Act to “propose procedures and standards to meet demonstrable funding needs beyond the level provided in the state funding program for children with disabilities.” This directive was in response to a declaratory judgment in 1988 by Judge Robert J. Doran, Thurston County Superior Court, related to school finance in Washington. The court held that:

“ . . . if the present formula is to continue as the basis for the allocation of funds for the handicapped programs, provision would have to be made for the districts that can establish their programs of special education are underfunded to obtain the additional or supplemental funds necessary to provide the constitutionally-mandated program of education for their handicapped students.” (School Funding IIB, Conclusion of Law 1.16)

The court also concluded that:

“In determining a school district’s “need” for any additional funds, the State will obviously have to be satisfied. . . that the district requesting the funding beyond the funds generated by the formula are in fact operating a reasonably efficient program of education for the handicapped students, that the IEPs are properly prepared and formulated, and the district is otherwise making an effort to provide the program requested within the funds generated by the formula.” (School Funding IIB, Conclusion of Law 1.17)

Otherwise known as the “safety net study,” the 1992 OSPI study proposed standards for safety net relief consistent with the Doran decision, and it examined the expenditure patterns of local school districts related to special education. Standards for safety net relief similar to those proposed in the report were adopted by the Legislature in the 1995–97 biennial budget. The report also concluded that differences in expenditure patterns were related to (1) local district philosophy regarding the provision of special education, (2) access to additional funds (levy or federal discretionary), and (3) differences in accounting practices at the local level.

An Overview of Federal and State Statutes Addressing the Education of Children with Disabilities was an attempt to determine the extent to which state statutes and regulations met or exceeded federal statutes and regulations. The 1994 report summarized that, “(t)he current state statutes and rules impose virtually the same procedural requirements on school districts as those required by federal law. The main differences, between federal and state requirements, are that the state defines specific eligibility criteria for each disability category and requires the evaluation to identify a child’s disability within one of the disability categories.” The reason that state eligibility requirements differed from the federal standard is that the Legislature was still endorsing a categorical funding formula at the time which required the assignment of a disability category to a child with a disability for state funding purposes.

The 1995 *Special Education Fiscal Study* conducted by the Washington State Institute for Public Policy and the Legislative Budget Committee was in response to a request by the 1994 Legislature to design and conduct a study of special education in Washington State in collaboration with legislative fiscal committees and the Superintendent of Public Instruction. This study was a prelude to the 1995 Legislature’s decision to modify the state funding formula for special education effective in the 1995–97 biennial budget. There were three key findings in the study. First, special education enrollment during the preceding ten years had increased twice as fast as basic education enrollment during the same period of time. Second, the categorical (labeling by disability) funding formula for special education in place by the Legislature at the time created incentives for school districts to choose higher cost categories when assigning students to special education. And, third, there were demonstrable differences between the Legislature’s assumptions in the then-current funding formula and the actual services that were provided when a sample of more than 1,500 individualized education programs (IEPs) were reviewed as part of the methodology of the study.

Related Activities

There have been a number of related activities associated with the provision of special education in Washington during the past several years that have impacted the administration of programs. These related activities include (1) a written request from Representative Kim Peery to OSPI in 1992, (2) the decision by the Legislature to require Medicaid recovery for eligible special education students in 1993, (3) an evaluation of the safety net process by the Washington State Institute for Public Policy in 1996, and (4) the Legislature’s decision to fund “. . . staff and related costs to audit special education programs that exhibit unusual rates of growth, extraordinarily high costs, or other characteristics requiring attention of the state safety net committee” in the State Auditor’s Office in 1997.

At the close of the 1992 legislative session, Representative Kim Peery sent a written request to then Superintendent of Public Instruction Billings to review, revise, and/or eliminate any “unnecessary, inconsistent or inappropriate” state special education regulations that exceeded federal requirements and “stood in the way of providing a quality education to students in our state.” Superintendent Billings’ response to the request was to authorize a statewide task force of all appropriate stakeholders to “compare and contrast our state regulations in special education with those at the federal level. . . and advocate for revocation of such inappropriate and/or unnecessary regulations while still maintaining a quality educational experience for all students.”

The statewide taskforce began the side-by-side comparison of state rules and regulations to federal rules and regulations in the fall of 1992 with the help of the nationally recognized consulting firm of Taylor-Hagerty and Associates. Instead of exceeding the federal requirements, it was determined after a thorough and complete analysis that chapter 392-171 WAC did not meet the baseline federal requirements in 37 separate areas. These deficiencies were corrected and approved by the United States Department of Education, Office of Special Education Programs, in

conjunction with their triennial monitoring of the state in 1994. The work of the statewide task force authorized by Superintendent Billings in 1992 culminated in the adoption of chapter 392-172 WAC in November of 1995. Chapter 392-172 WAC, which replaced chapter 392-171 WAC, currently governs the provision of special education services in our state and was the subject of the 1994 statutory review conducted by the Washington State Institute for Public Policy.

Another related activity via the passage of Substitute Senate Bill 5727 in 1993 that has impacted the provision of special education in Washington during the past several years has been the legislative decision to require districts to seek Medicaid reimbursement for eligible special education students or forfeit a percentage of their block grant funds. This state legislation requires districts to document the provision of Medicaid reimbursable services to special education-eligible students, and then either self-bill or utilize a third party billing agent to recover a portion of the federal share of allowable costs. The district is able to retain 20 percent of the federal share, and the state general fund retains 80 percent of the federal share. The Legislature also required OSPI to develop rules to implement the Medicaid recovery process. These rules (WAC 392-140-531) were adopted in 1994.

When the special education safety net process was created in the biennial budget for 1995–97, the Legislature also mandated that (1) OSPI develop rules to implement the process in consultation with the Office of Financial Management and the fiscal committees of the Legislature and (2) the Washington State Institute for Public Policy evaluate the process and recommend any necessary changes for consideration in the 1997–99 biennial budget. The rules to implement the safety net process are found at WAC 392-140-601 through 392-140-685. Recommendations from the Institute for Public Policy’s evaluation resulted in changes to the composition of the state oversight committee, the safety net application, and the timing of the application process.

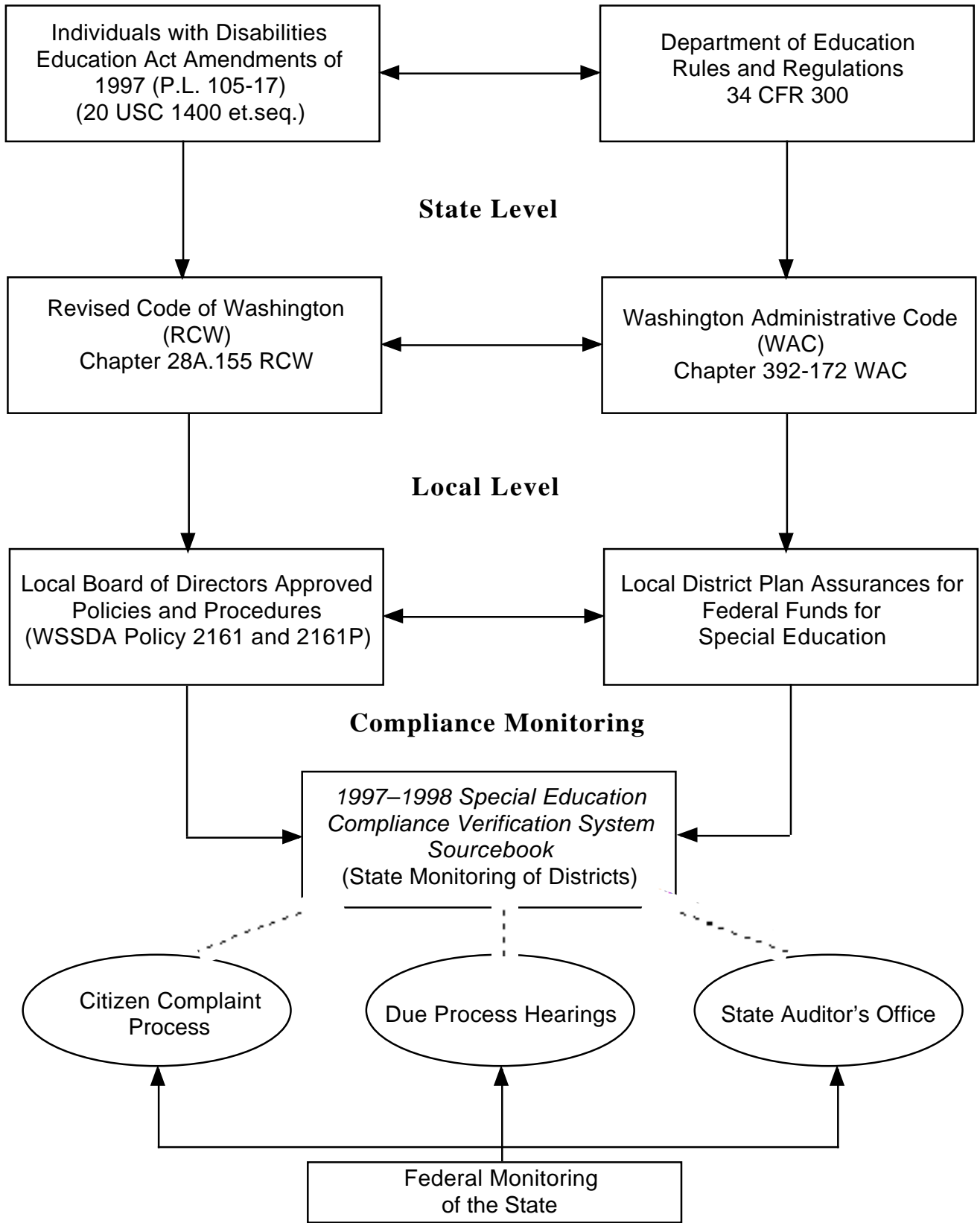
The most recent legislative activity associated with the administration of special education in Washington is the allocation of funds in the 1997–99 biennial budget to the State Auditor’s Office for the purposes of (a) substantiating local district claims for safety net relief and (b) providing the state safety net oversight committee with information on which to base its decisions.

The overview section of this report details a series of legislative actions, summarizes a number of previous studies, and includes some related activities that have impacted the current administrative and statutory structure of special education in Washington. The various elements of the administrative and statutory structure are presented and described in the analysis portion of this report.

Analysis

Figure One of this report represents a diagram of the relationship between federal, state, and local requirements of special education services together with the program compliance monitoring process for ensuring conformity with the individual entitlement of special education for eligible students and their families. At the federal level, the **Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (Public Law 105-17)** represents the statutory authority of special education in the 50 states and applicable territories. The rules and regulations necessary to implement the law are found in **34 Code of Federal Regulations (CFR) 300**.

**FIGURE ONE
Federal Level**



Each state follows a similar pattern of statutory authority and implementing rules and regulations. In Washington, **chapter 28A.155 RCW** creates the statutory authority for special education and **chapter 392-172 WAC** represents corresponding rules and regulations to implement the statute.

At the local level, **boards of directors' policies and procedures** (generally available from the Washington State School Directors' Association) establish a consistent framework to implement the RCWs, and the **local district plan application for federal funding** contains local district assurances consistent with chapter 392-172 WAC and 34 CFR 300.

The parallel structure of statute to regulation and policy/procedure to assurance at the federal, state, or local level shown in Figure One represents the building blocks of the administrative and statutory authority for special education. The accountability associated with these requirements culminates in the program compliance monitoring process for special education. Compliance monitoring occurs in a variety of ways. The primary method of compliance monitoring is contained in a sourcebook document which is available to all districts in either hard copy or on disk. All of the special education program compliance items associated with the current rules and regulations for special education are contained in a checklist format in this single document. The checklist format of the document provides accompanying federal and state regulatory citations and interpretations for each checklist item. Local districts are monitored for compliance with the administrative and statutory requirements of special education once every three years by a third party contractor, per a federal corrective action plan in 1995, using the sourcebook as a guide.

In addition to the routine triennial program compliance review of local districts, there are three procedural safeguards which also serve to determine local district compliance with applicable special education rules and regulations. These are (1) citizen's complaints, (2) due process hearings, and (3) State Auditor's Office (SAO) reviews. **Although not identified in Figure One, it should also be noted that resolution of disputes through a state-funded mediation process is also available as an alternative to either a citizen's complaint or due process hearing. The mediation process is consistent with the programmatic recommendations made in the 1990 OFM study of special education.**

Disagreements between a parent, guardian, or anyone else on behalf of an eligible special education student and a local district may be brought to the attention of the state through the citizen's complaint process. A citizen's complaint must allege a violation of state or federal special education rules and/or regulations and must be submitted in writing. Specific procedures set forth in federal and state law must be followed.

A due process hearing may be initiated by parents, guardians, local school districts, or another public agency in an attempt to resolve a special education dispute regarding the possible violation of state or federal law. Due process hearings are legal proceedings managed by the Office of Administrative Hearings. As an example of the administrative impact of due process hearings, in 1997, the last full year of complete data, there were 115 special education due process hearings requested in the state of Washington. This number represents slightly more than 1/1000th of the special education population in the state (approximately 110,000 students). Seventy-four of the hearings requested were either dismissed or withdrawn.

The State Auditor's Office conducts fiscal compliance reviews of districts relative to their receipt, disposition, and expenditure of federal and state special education funds. Among other issues, field audits verify claims for student eligibility for special education services consistent with federal and state standards. As mentioned earlier, the SAO's role has been expanded relative to special education safety net claims by local districts in the passage of the 1997-99 biennial budget.

State special education programs are also monitored by the United States Department of Education, Office of Special Education Programs, once every three years to (1) determine the state's compliance with federal requirements and (2) verify the accuracy and completeness of the state's compliance activities with local districts and other applicable service providers. Similar to local districts, the state may be required to develop a corrective action plan to resolve any appropriate compliance findings as a result of the monitoring of the state.

Figure One represents a schematic to describe the statutory and administrative authority for the implementation of special education in Washington. Relationships between statutory authority and administrative implementation through the rule and regulation process were shown. Accountability for the overall system is vested in a variety of program and fiscal compliance monitoring activities.

In addition to the administrative structure of special education which is described in Figure One, the central question of the analysis section of this report is as follows:

Do the current state rules and regulations for special education exceed the current federal rules and regulations for special education?

In order to answer this question, two comparisons were made. First, the proposed 34 CFR 300 (federal special education rules and regulations) were compared, side-by-side, to chapter 392-172 WAC (state special education rules and regulations). This comparison is shown in Table A (see appendix). The comparison identifies, in the shaded areas, what new federal requirements have been established as a result of reauthorization.

The second level of comparison presents a side-by-side view of the current chapter 392-172 WAC with the proposed 34 CFR 300. This comparison is displayed on Table B (see appendix) and similarly shows, through the use of shaded areas, state regulations that currently have no direct reference in the proposed federal regulations.

Results

The results of this study are based, in large part, on the analysis of the information contained on Tables A and B (see appendix). Table A compares the proposed federal rules and regulations for the Individuals with Disabilities Act (IDEA) Amendments of 1997 to the current state rules and regulations for special education in chapter 392-172 WAC, which were most recently amended in 1995. Table B reverses the comparison of federal to state rules and regulations so that a composite picture of the regulatory requirements for special education can be drawn.

Table A

This table shows that the proposed rules and regulations for special education at the federal level, once finalized, will create the need to make some modifications at the state level in order to be consistent. A key to the required changes and/or modifications is found at the bottom of each page in Table A. The key is included for each WAC reference in the right-hand column and provides guidance for adjusting the differences between the proposed federal rules and regulations and the corresponding rules and regulations at the state level.

The major differences, or areas which are not presently identifiable in state regulations, are shown in the 52 citations that appear in shaded areas of the table. This comparison is similar to the comparison requested by Representative Peery in 1992, which identified 37 inconsistencies between federal and state rules and regulations, and is not uncommon when a federal law such as IDEA is reauthorized. The comparison in Table A clearly shows that the state rules and regulations for special education parallel, but do not exceed, those currently proposed at the federal level.

Table B

Table B presents a comparison of the state rules and regulations for special education and their basis in proposed federal rules and regulations. Similar to Table A, this table also provides an analysis key at the bottom of each page which is referenced in the right-side column to provide specific information when comparing actual differences. The key at the bottom of each page in the table can also be used to identify areas of state rules and regulations which have no direct reference in the proposed federal rules and regulations for the IDEA Amendments of 1997. The shaded areas on this table represent the citations in WAC that are not specifically addressed in the proposed 34 CFR 300 series.

It can be seen in Table B that there are nine areas of state regulations which have no direct or one-to-one correlation to federal rule. However, these rules are necessary to connect existing state rule and regulation with those at the federal level for purposes of continuity and applicability to the state. For example, the eligibility language at the state level exceeds the eligibility language provided in 34 CFR. As stated earlier, when chapter 392-172 WAC was adopted, the state funding formula for special education was categorical or variable, dependent upon the label assigned to the student. The federal funding formula for special education has never differentiated on the basis of disability. Therefore, states who chose to fund special education on the basis of a disability category have traditionally had more complex eligibility criteria than exist at the federal level in order to budget and manage available resources. Washington, prior to the 1995–97 biennial budget, was an example of such a state that utilized a categorical funding formula. Another example of a state regulation that is not referenced in federal rule and regulation is in the area of aversive therapy. Aversive therapy can be defined as the application of a negative consequence for a given behavior. However, aversive therapy may include the appropriate use of time-out rooms, isolation or the use of force and restraint. The aversive therapy regulations were included in state regulations a number of years ago to resolve concerns lodged with the Legislature. Table B further shows that every state rule and regulation in WAC, except for those that appear in the shaded areas, is referenced in the proposed 34 CFR 300 series.

The previous examples and other specific areas included in the shaded portions of Table B are the basis of Table C, which provides further analysis for each state rule and regulation that has no direct correlation to the proposed federal rules.

Table C

The current WAC citations that do not directly relate to a corresponding federal citation are shown in Table C (see appendix). Comments for each citation are provided. Generally, state regulations that exceed the baseline of federal rules and regulations established in 34 CFR 300 are provided to clarify any requirements that are (1) unique to the state or (2) ensure that state rules and regulations for special education are compatible with other existing RCWs and/or WACs.

For example, and as previously discussed, Table C shows a number of WAC citations that do not directly relate to a corresponding federal citation in the area of “eligibility criteria.” Federal

regulations define disability conditions, but they do not typically establish state-specific eligibility criteria. The development of specific eligibility criteria is left to the states to respond to state or local funding considerations or program issues that may be unique to a given state. Similarly, state rule and regulation references to “choice,” “Running Start,” and “home/hospital instruction” are state-specific initiatives and would not have any federal counterpart. Again, aversive therapy regulations at the state level are another example of a state-specific consideration that is historical in nature and assists in the operation a special education program at the local level, but has no specific reference at the federal level.

Summary Observations

Special education is a complex program that continues to evolve in practice as a result of changes in public policy, federal and state legislative action, and the availability of data which may serve to challenge persistent perceptions about the program. The provision of special education in Washington in the common school system has existed in state statute for more than 50 years. During the past 20 years, Congress has established a federal entitlement to special education services for eligible students and conditioned the receipt of federal funds to compliance with federal rule and regulation. Court cases have incrementally decided the implications of both state and federal law in the provision of services at the local district level. During the past ten years, funding formulas have been devised, reviewed and revised, and numerous studies have been conducted, reported, and acted upon within the state of Washington. The following summary observations are provided in consideration of the overview, analysis, and results provided in this study.

- The administrative and statutory structure of special education in Washington contains no more than the essential elements to ensure both the state and federal entitlement for the provision of special education services to eligible students.
- State rules and regulations for special education parallel, but do not broaden, the proposed baseline of federal requirements established in 34 CFR 300 in either number or substance. In fact, state rules and regulations would have to add references for at least 52 federal citations in order to be consistent with the baseline of proposed federal regulations in the reauthorization of IDEA.
- While there are a limited number of state rules and regulations in special education that have no direct correlation to the provision of special education services in federal rule, these rules and regulations exist when states need to determine their own unique procedures to implement a federal requirement or to acknowledge other statutory references within the state.
- There are state rules and regulations that are not directly related to either the federal (34 CFR 300) or state (chapter 392-172 WAC) provision of special education services, but do have implications for the provision of special education services. These rules are related to state legislative initiatives for Medicaid recovery and safety net funding on behalf of special education-eligible students and, as such, may contribute to a perception that state rules and regulations exceed those at the federal level.
- Increased activity on the part of the State Auditor’s Office in special education since 1997 may have also heightened the awareness of long-standing compliance and accountability issues in special education, thus contributing to an overall concern of excessive regulation.

Appendices

TABLE A
Special Education: Regulatory Comparison Between
34 CFR Part 300 and Chapter 392-172 WAC

Subpart A—General

Purposes, Applicability, and Regulations That Apply to This Program

34 CFR Part 300	Chapter 392-172 WAC
300.1 Purposes.	WAC 020 Purposes.
300.2 Applicability to state, local, and private agencies.	WAC 010 Authority.
300.3 Regulations that apply.	* (1)
300.4 Act.	* (2)
300.5 Assistive technology device.	WAC 070 Assistive technology device.
300.6 Assistive technology service.	WAC 070 Assistive technology service.
300.7 Child with a disability.	* (3)
300.8 Day.	* (4)
300.9 Educational service agency.	* (4)
300.10 Equipment.	* (4)
300.11 Free appropriate public education.	WAC 035 Free appropriate public education.
300.12 General curriculum.	
300.13 Include.	* (4)
300.14 Individualized education program.	* (2)
300.15 Individualized education program team.	* (5)
300.16 Individualized family service plan.	* (2)
300.17 Local education agency.	* (4) WAC 402 Native language.
300.18 Native language.	* (6) WAC 035 Parent.
300.19 Parent.	

34 CFR Part 300	Chapter 392-172 WAC
300.20 Public agency.	WAC 035 Public Agency.
300.21 Qualified.	WAC 552 Qualified.
300.22 Related services.	* (6) WAC 055 Related Service.
300.23 Secondary school.	* (4)
300.24 Special education.	* (6) WAC 045 Special Education.
300.25 State.	* (4)
300.26 Supplementary aids and services.	* (6) WAC 065 Supplementary Aids/Services.
300.27 Transition services.	* (6) WAC 060 Transition Services.
300.28 Definitions in EDGAR.	* (1)

- * (1) Reference point only—applies to multiple WACs.
- * (2) No parallel state special education rule.
- * (3) Eligibility criteria for students with disabilities—WAC 392-172-114 through 392-172-148.
- * (4) New federal requirement. Regulatory citation shaded.
- * (5) Cross-reference only.
- * (6) Federal requirement revised—WAC needs updating.

Subpart B—State and Local Eligibility—General

State Eligibility—General

34 CFR Part 300

Chapter 392-172 WAC

300.110	Condition of assistance.	*(7)
300.111	Exception for prior state policies and procedures on file with the Secretary.	*(7)
300.112	Amendments to state policies and procedures.	*(7)
300.113	Approval by the Secretary.	*(7)

*(1) Reference point only—applies to multiple WACs.

*(4) New federal requirement. Regulatory citation shaded.

*(5) Cross-reference only.

*(6) Federal requirement revised—WAC needs updating.

*(7) Performance/assurance standard only—federal or state.

State Eligibility—Specific Conditions	
34 CFR Part 300	Chapter 392-172 WAC
300.121 Free appropriate public education (FAPE)	*(6) WAC 030 Students' rights to special education programs.
300.122 Exception to FAPE for certain ages.	*(6) WAC 030 (Exceptions)
300.123 Full educational opportunity goal (FEOG)	*(7)
300.124 FEOG—timetable.	*(7)
300.125 Childfind.	*(6) WAC 100 Childfind.
300.126 Procedures for evaluation and determination of eligibility.	*(5)
300.127 Confidentiality of personally identifiable information	*(5)
300.128 Individualized education programs.	*(5)
300.129 Procedural safeguards.	*(5)
300.130 Least restrictive environment.	*(5)
300.132 Transition of children from Part C to preschool programs	*(6) WAC 176 Transition to preschool program.
300.133 Children in private schools.	*(5)
300.135 Comprehensive system of personnel development.	*(5)
300.136 Personnel standards.	*(6) WAC 572 and 574 Standards/review.
300.137 Performance goals and indicators.	*(4)
300.138 Participation in assessments.	
300.139 Reports relating to assessments.	*(4)
300.141 SEA responsibility for general supervision.	*(4)
300.142 Methods of ensuring services.	WAC 010 and 020 Authority/purposes
300.143 SEA implementation of procedural safeguards.	*(6) WAC 502
300.144 Hearings relating to LEA eligibility.	WAC 300 General responsibility of public agencies.
300.145 Recovery of funds for misclassified children.	WAC 590 Denials/hearings.
300.146 Suspension and expulsion rates.	WAC 516 Recovery of funds.
300.147 Additional information if SEA provides direct services.	*(4)
300.148 Public participation.	*(7)
300.150 State advisory panel.	*(7)
300.152 Prohibition against commingling.	*(5)
300.153 State-level nonsupplanting.	*(7)
300.154 Maintenance of state financial support.	*(7)
	*(4)

*(4) New federal requirement. Regulatory citation shaded.

*(5) Cross-reference only.

*(6) Federal requirement revised—WAC needs updating.

*(7) Performance/assurance standard only—federal or state.

State Eligibility—Specific Conditions (continued)		
300.155	Policies and procedures for use of Part B funds.	*(6) WAC 506 Use/allocation of Part B funds.
300.156	Annual description of use of Part B funds.	*(6) WAC 506 Use/allocation of Part B funds.

34 CFR Part 300	Chapter 392-172 WAC	
300.180	Condition of assistance.	*(6) WAC 580 Annual applications.
300.181	Exception for prior LEA or state agency policies and procedures on file with the SEA.	*(4)
300.182	Amendments to LEA policies and procedures.	*(6) WAC 584 Review/amendment process.
300.184	Excess cost requirement.	*(7)
300.185	Meeting the excess cost requirement.	*(7)
300.190	Joint establishment of eligibility.	*(6) WAC 582 Collaborative applications.

LEA and State Agency Eligibility—General		
300.192	Requirements for establishing eligibility.	*(6) WAC 582 Collaborative applications.
300.194	State agency eligibility.	*(4)
300.196	Notification of LEA or state agency in case in of ineligibility.	WAC 590 Denials/hearings.
300.197	LEA and state agency compliance.	WAC 514 Fund withholding.

*(4) New federal requirement. Regulatory citation shaded.

*(5) Cross-reference only.

*(6) Federal requirement revised—WAC needs updating.

*(7) Performance/assurance standard only—federal or state.

LEA Eligibility—Specific Conditions	
<p>34 CFR Part 300</p> <p>300.220 Consistency with state policies.</p> <p>300.221 LEA and state agency implementation of CSPD.</p> <p>300.230 Use of amounts.</p> <p>300.231 Maintenance of effort.</p> <p>300.232 Exception to maintenance of effort.</p> <p>300.233 Treatment of federal funds in certain fiscal years.</p> <p>300.234 Schoolwide programs under Title I of the ESEA.</p> <p>300.235 Permissive use of funds.</p> <p>300.240 Information for SEA.</p> <p>300.241 Treatment of charter schools and their students.</p> <p>300.242 Public information.</p> <p>300.244 Coordinated services system.</p> <p>300.245 School-based improvement plan.</p> <p>300.246 Plan requirements.</p> <p>300.247 Responsibilities of the LEA.</p> <p>300.248 Limitation.</p> <p>300.249 Additional requirements.</p> <p>300.250 Extension of plan.</p>	<p>Chapter 392-172 WAC</p> <p>*(5)</p> <p>*(6) WAC 550 CSPD.</p> <p>*(6) WAC 580 Annual applications.</p> <p>*(6) WAC 580 Annual applications.</p> <p>*(6) WAC 580 Annual applications.</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(6) WAC 588 Public participation.</p> <p>*(6) WAC 594 Program coordination.</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p> <p>*(4)</p>

Public Participation	
<p>34 CFR Part 300</p> <p>300.280 Public hearings before adopting state policies and procedures.</p> <p>300.281 Notice.</p> <p>300.282 Opportunity to participate; comment period.</p> <p>300.283 Review of public comments before adopting policies and procedures.</p> <p>300.284 Publication and availability of approved policies and procedures.</p>	<p>Chapter 392-172 WAC</p> <p>*(7) WAC 010 Authority.</p> <p>*(7) WAC 010 Authority.</p> <p>*(7) WAC 010 Authority.</p> <p>*(7) WAC 010 Authority.</p> <p>*(7) WAC 010 Authority.</p>

- *(4) New federal requirement. Regulatory citation shaded.
- *(5) Cross-reference only.
- *(6) Federal requirement revised—WAC needs updating.
- *(7) Performance/assurance standard only—federal or state.

Subpart C—Services

Free Appropriate Public Education

34 CFR Part 300

- 300.300 Provision of FAPE.
- 300.301 FAPE—methods and payments.
- 300.302 Residential placement.
- 300.303 Proper functioning of hearing aids.
- 300.304 Full educational opportunity goal.
- 300.305 Program options.
- 300.306 Nonacademic services.
- 300.307 Physical education.
- 300.308 Assistive technology.
- 300.309 Extended school year services.
- 300.311 FAPE requirements for students with disabilities in adult prisons.

Chapter 392-172 WAC

- *(6) WAC 030 Students' rights (FAPE).
- WAC 226 Residential educational services.
- WAC 226 Residential educational services.
- WAC 138 and 140 Definitions/eligibility.
- *(6) WAC 580 Annual applications.
- WAC 172 LRE.
- WAC 172 LRE.
- WAC 162 Physical education required.
- WAC 075 Availability/assistive technology.
- WAC 160 IEP.
- *(4)

Evaluations and Reevaluations

34 CFR Part 300

- 300.320 Initial evaluations
- 300.321 Reevaluations.

Chapter 392-172 WAC

- *(5)
- *(5)

- *(4) New federal requirement. Regulatory citation shaded.
- *(5) Cross-reference only.
- *(6) Federal requirements revised—WAC needs updating.
- *(7) Performance/assurance standard only—federal or state.

Individualized Education Programs	
34 CFR Part 300	Chapter 392-172 WAC
300.340 Definitions.	*(5)
300.341 SEA responsibility.	*(7)
300.342 When IEPs must be in effect.	WAC 158 IEP implementation.
300.343 IEP meetings.	*(6) WAC 156 Meetings.
300.344 IEP team.	*(6) WAC 156 Meetings.
300.345 Parent participation.	*(6) WAC 156 and 166 Meetings/transition.
300.346 Development, review, and revision of IEP.	*(4)
300.347 Content of IEP.	*(6) WAC 160 IEP.
300.348 Agency responsibilities for transition services.	WAC 160 IEP.
300.349 Private school placements by public agencies.	WAC 224 Contracting for services.
300.350 Children with disabilities in religiously affiliated or other private schools.	WAC 234 Private school students.
300.351 Individualized education program accountability.	WAC 160 IEP.

Direct Services by SEA	
34 CFR Part 300	Chapter 392-172 WAC
300.360 Use of LEA allocation for direct services.	*(6) WAC 582 Collaborative applications.
300.361 Nature and location of services.	*(7)
300.370 Use of state agency allocations.	*(6) WAC 506 Use of Part B funds.
300.372 Applicability of nonsupplanting requirement.	*(7)

Comprehensive System of Personnel Development	
34 CFR Part 300	Chapter 392-172 WAC
300.380 General.	*(6)*(8)
300.381 Adequate supply of qualified personnel.	*(6)*(8)
300.382 Improvement strategies.	*(6)*(8)

- *(4) New federal requirement. Regulatory citation shaded.
- *(5) Cross-reference only.
- *(6) Federal requirements revised—WAC needs updating.
- *(7) Performance/assurance standard only—federal or state.
- *(8) CSPD—WAC 392-172-550 through 392-172-574.

Subpart D—Children in Private Schools	
Children with Disabilities in Private Schools Placed or Referred by Public Agencies	
34 CFR Part 300	Chapter 392-172 WAC
300.400 Applicability of §§300.400–300.402.	WAC 224 Contracted services.
300.401 Responsibility of state educational agency.	WAC 224 Contracted services.
300.402 Implementation by SEA.	WAC 520 Implementation by state.
300.403 Placement of children by parents if FAPE is at issue.	*(6) WAC 230 Parental placements.

Children With Disabilities Enrolled by Their Parents in Private Schools	
34 CFR Part 300	Chapter 392-172 WAC
300.450 Definition of “private school children with disabilities.”	WAC 232 Definition—Private school students with disabilities.
300.451 Childfind for private school children with disabilities.	*(5)
300.452 Basic requirements—services.	WAC 526 State responsibility.
300.453 Expenditures.	*(4)
300.454 Services determined.	*(6) WAC 236 Needs/numbers/types services.
300.455 Services provided.	*(4)
300.456 Location of services.	*(4)
300.457 Complaints	*(4)
300.458 Separate classes prohibited.	WAC 244 Segregation prohibited.
300.459 Requirement that funds not benefit a private school.	WAC 246 Funds not to benefit.
300.460 Use of public school personnel.	WAC 240 Personnel in private schools.
300.461 Use of private school personnel.	WAC 240 Personnel in private schools.
300.462 Requirements concerning property, equipment and supplies for the benefit of private school children with disabilities.	*(6) WAC 242 Equipment/construction

- *(4) New federal requirement. Regulatory citation shaded.
- *(5) Cross-reference only.
- *(6) Federal requirements revised—WAC needs updating.

Subpart E—Procedural Safeguards

Due Process Procedures for Parents and Children

34 CFR Part 300

- 300.500 General responsibility of public agencies; definitions.
- 300.501 Opportunity to examine records; parent participation in meetings.
- 300.502 Independent educational evaluation.
- 300.503 Prior notice by the public agency; content of notice.
- 300.504 Procedural safeguards notice.
- 300.505 Parental consent.
- 300.506 Mediation.
- 300.507 Impartial due process hearing; parent notice; disclosure.
- 300.508 Impartial hearing officer.
- 300.509 Hearing rights.
- 300.510 Finality of decision; appeal; impartial review.
- 300.511 Timelines and convenience of hearings and reviews.
- 300.512 Civil action.
- 300.513 Attorneys' fees.
- 300.514 Child's status during proceedings.
- 300.515 Surrogate parents.
- 300.517 Transfer of parental rights at age of majority.

Chapter 392-172 WAC

- WAC 300 General responsibility and WAC 040 Definitions.
- WAC 406 Examination of records.
- * (4) Meetings
- * (6) WAC 150 Independent ed evaluation.
- * (6) WAC 302 and WAC 306 Notice/content.
- * (6) WAC 306 Contents of notice.
- * (6) WAC 304 Parent consent.
- * (6) * (9)
- * (6) WAC 350 Right to initiate
- WAC 352 Hearing officers.
- * (6) WAC 354 Hearing rights.
- * (6) WAC 360 Final decision/appeal.
- WAC 356 Timelines/convenience
- * (6) WAC 360 Final decision/appeal.
- * (6) WAC 362 Attorneys' fees.
- * (6) WAC 364 Student's status.
- * (6) WAC 308 Surrogate parents.
- * (4)

* (4) New federal requirement. Regulatory citation shaded.
* (6) Federal requirements revised—WAC needs updating.
* (9) Mediation—WAC 392-172-310 through 392-172-316.

Discipline Procedures	
34 CFR Part 300	Chapter 392-172 WAC
300.520 Authority of school personnel.	*(6)*(10)
300.521 Authority of hearing officer.	*(4)
300.522 Determination of setting.	*(4)
300.523 Manifestation determination review.	*(6)*(10)
300.524 Determination that behavior was not manifestation of disability.	*(6)*(10)
300.525 Parent appeal.	*(6)*(10)
300.526 Placement during appeals.	*(6)*(10)
300.527 Protections for children not yet eligible for special education and related services.	*(4)
300.528 Expedited due process hearings.	*(6)*(10)
300.529 Referral to and action by law enforcement and judicial authorities.	*(4)

Procedures for Evaluation and Determination of Eligibility	
34 CFR Part 300	Chapter 392-172 WAC
300.530 General.	WAC 108 General evaluation safeguards.
300.531 Initial evaluation.	WAC 108 General evaluation safeguards.
300.532 Evaluation procedures.	*(6) WAC 108 Evaluation procedures.
300.533 Determination of needed evaluation data.	*(4)
300.534 Determination of eligibility.	*(4)
300.535 Procedures for determining eligibility and placements	*(6)*(11)
300.536 Reevaluation.	*(6)*(11)

Additional Procedures for Evaluating Children With Specific Learning Disabilities	
34 CFR Part 300	Chapter 392-172 WAC
300.540 Additional team members.	*(6) WAC 108 General evaluation/personnel.
300.541 Criteria for determining the existence of a specific learning disability.	WAC 126 SLD/definition.
300.542 Observation.	WAC 128 SLD/evaluation.
300.543 Written report.	WAC 128 SLD/evaluation.

*(4) New federal requirement. Regulatory citation shaded.

*(6) Federal requirement revised—WAC needs updating.

*(10) Disciplinary exclusion—WAC 392-172-372 through 392-172-382.

*(11) Evaluation of progress/reevaluation—WAC 392-172-182 through 392-172-190.

Least Restrictive Environment	
<p>34 CFR Part 300</p> <p>300.550 General. 300.551 Continuum of alternative placements. 300.552 Placements. 300.553 Nonacademic settings. 300.554 Children in public or private institutions. 300.555 Technical assistance and training institutions. 300.556 Monitoring activities.</p>	<p>Chapter 392-172 WAC</p> <p>WAC 172 LRE. WAC 174 Continuum. WAC 180 Establishing educational settings. WAC 172 LRE. WAC 522 Students in public/private institutions. WAC 524 Technical assistance/training. WAC 524 Monitoring activities.</p>

Confidentiality of Information	
<p>34 CFR Part 300</p> <p>300.560 Definitions. 300.561 Notice to parents. 300.562 Access rights. 300.563 Record of access. 300.564 Records on more than one child. 300.565 List of types and locations of information. 300.566 Fees. 300.567 Amendment of records at a parent's request. 300.568 Opportunity for a hearing. 300.569 Result of hearing. 300.570 Hearing procedures. 300.571 Consent. 300.572 Safeguards. 300.573 Destruction of information. 300.574 Children's rights. 300.575 Enforcement. 300.576 Disciplinary information. 300.577 Department use of personally identifiable information.</p>	<p>Chapter 392-172 WAC</p> <p>WAC 400 and 402 Definitions. WAC 402 Notice to parents. WAC 408 Access rights. WAC 410 Record of access. WAC 412 Records/more than one student. WAC 414 List types/locations of information. WAC 416 Fees. WAC 418 Amendment of records. WAC 418 Opportunity for hearing. WAC 418 Result of hearing. WAC 420 Hearing procedures. WAC 422 Consent. WAC 424 Safeguards. WAC 426 Destruction of information. WAC 035 Adult student. WAC 504 Monitoring. *(4) *(2)</p>

- *(2) No parallel state special education rule.
- *(4) New federal requirement. Regulatory citation shaded.
- *(6) Federal requirement revised—WAC needs updating.

Subpart F—State Administration	
General	
34 CFR Part 300	Chapter 392-172 WAC
300.600 Responsibility for all educational programs.	WAC 010 and 020 Authority/purposes.
300.601 Relation of Part B to other federal programs.	*(2)
300.602 State-level activities.	*(5)

Use of Funds	
34 CFR Part 300	Chapter 392-172 WAC
300.620 Use of funds for state administration.	*(6) WAC 506 Part B Administrative funds.
300.621 Allowable costs.	WAC 506 Use of Part B funds.
300.622 Subgrants to LEAs for capacity building and improvement.	*(4)
300.623 Amount required for subgrants to LEAs.	*(4)
300.624 State discretion in awarding subgrants.	*(4)

State Advisory Panel	
34 CFR Part 300	Chapter 392-172 WAC
300.650 Establishment of advisory panels.	WAC 500 Advisory council.
300.651 Membership.	*(6) WAC 500 Advisory council.
300.652 Advisory panel functions.	*(6) WAC 500 Advisory council.
300.653 Advisory panel procedures.	WAC 500 Advisory council.

State Complaint Procedures	
34 CFR Part 300	Chapter 392-172 WAC
300.660 Adoption of state complaint procedures.	*(6)*(12)
300.661 Minimum state complaint procedures.	*(6)*(12)
300.662 Filing a complaint.	*(6)*(12)

- *(2) No parallel state special education rule.
- *(4) New federal requirement. Regulatory citation shaded.
- *(5) Cross-reference only.
- *(6) Federal requirement revised—WAC needs updating.
- *(12) Citizen complaint process—WAC 392-172-320 through 392-172-346.

Subpart G—Allocation of Funds and Reports

Allocations

34 CFR Part 300	Chapter 392-172 WAC
300.700 Special definition of the term “state.”	*(5)
300.701 Grants to states.	*(7)
300.702 Definitions.	*(7)
300.703 Allocations to states.	*(7)
300.706 Permanent formula.	*(4)
300.707 Increase in funds.	*(4)
300.708 Limitation.	*(4)
300.709 Decrease in funds.	*(4)
300.711 Subgrants to LEAs.	*(4)
300.712 Allocations to LEAs.	*(4)
300.713 Former Chapter 1 state agencies.	*(4)
300.714 Reallocation of LEA funds.	*(2)

Reports

34 CFR Part 300	Chapter 392-172 WAC
300.750 Annual report of children served—report requirement.	WAC 510 Child count procedures.
300.751 Annual report of children served—information required in report.	*(6) WAC 510 Child count procedures.
300.752 Annual report of children served—certification.	WAC 510 Child count procedures.
300.753 Annual report of children served—criteria for counting children.	*(7)
300.754 Annual report of children served—other responsibilities of the state education agency.	*(4)
300.755 Disproportionality.	*(4)
300.756 Acquisition of equipment; construction or alteration of facilities.	*(4)

- * (2) No parallel state special education rule.
- * (4) New federal requirement. Regulatory citation shaded.
- * (5) Cross-reference only.
- * (6) Federal requirement revised—WAC needs updating.
- * (7) Performance/assurance standard only—federal or state.

TABLE B**Special Education: Regulatory Comparison Between
Chapter 392-172 WAC and 34 CFR Part 300**

General Authority and Purpose

Chapter 392-172 WAC	34 CFR Part 300
WAC 010 Authority. WAC 020 Purposes.	300.2 Applicability. *(1) 300.1 Purposes.

Students' Rights—General

Chapter 392-172 WAC	34 CFR Part 300
WAC 030 Students' rights to special education programs.	*(1) 300.121 and 122 FAPE/exceptions.

Students—General—Definitions

Chapter 392-172 WAC	34 CFR Part 300
WAC 035 Definitions of “free appropriate public education,” “adult student,” “special education student,” “parent,” and “public agency.”	300.11 FAPE. 300.574 Children’s rights. *(1) 300.19 Parent.
WAC 040 Definitions of “evaluation,” “current evaluation,” “reevaluation,” and “consent.”	300.20 Public agency. 300.532 Evaluation procedures. *(2) 300.536 Reevaluation and 300.500 Definitions.
WAC 045 Definition of “special education.”	*(1) 300.24 Special education.
WAC 055 Definition of “related services.”	*(1) 300.22 Related services.
WAC 060 Definition—transition services.	*(1) 300.27 Transition services.
WAC 062 Definition of terms related to transition services.	*(2)
WAC 065 Definition—supplementary aids and services.	*(1) 300.26 Supplementary aids/services.
WAC 070 Definition—assistive technology device and service.	300.5 and 300.6 Assistive technology device and service.
WAC 075 Availability of assistive technology.	300.308 Assistive technology.

*(1) Federal requirement revised—WAC needs updating.

*(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.

Student-Specific Procedures	
Identification	
Chapter 392-172 WAC	34 CFR Part 300
WAC 100 Childfind.	*(3) 300.125 Childfind.

Evaluation Procedures	
Chapter 392-172 WAC	34 CFR Part 300
WAC 102 Preevaluation procedures—referrals.	*(2)
WAC 104 Evaluation procedures—timeline.	*(4) 300.343(b) Timelines/note. 300.532 Evaluation procedures
WAC 106 General areas of evaluation.	*(1) 300.532 Evaluation procedures
WAC 108 General evaluation safeguards—personnel, materials and procedures.	*(1) 300.535 Determining eligibility and placement—note. 300.532 and 535 Evaluation/eligibility.
WAC 110 Communication disordered students—evaluation.	
WAC 112 Medical evaluation.	

- *(1) Federal requirement revised—WAC needs updating.
- *(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.
- *(3) Specific childfind activities not addressed in federal regulations.
- *(4) Federal timeline, “reasonable time period,” 60 days recommended.

Eligibility Criteria for Students with Disabilities		
Chapter 392-172 WAC	34 CFR Part 300	
WAC 114	Definition and eligibility criteria for developmentally delayed.	*(5) 300.7 Child with a disability.
WAC 116	Areas of developmental delay—definitions.	300.7 Child with a disability.
WAC 118	Definition and eligibility criteria for seriously behaviorally disabled.	*(6) 300.7 Child with a disability.
WAC 120	Definition and eligibility criteria for communication disordered.	*(6) 300.7 Child with a disability.
WAC 122	Definition and eligibility criteria for orthopedically impaired.	*(6) 300.7 Child with a disability.
WAC 124	Definition and eligibility criteria for health impaired.	*(6) 300.7 Child with a disability
WAC 126	Specific learning disability—definition.	300.7 Child with a disability.
WAC 128	Specific learning disability—evaluation procedures.	300.7 Child with a disability.
WAC 130	Discrepancy tables for determining severe discrepancy under WAC 392-172-132.	*(2)
WAC 132	Method for documenting severe discrepancy.	*(6) 300.7 Child with a disability
WAC 134	Definition and eligibility criteria for mental retardation.	*(6) 300.7 Child with a disability.
WAC 136	Definition and eligibility criteria for multiple disabilities.	300.7 Child with a disability.
WAC 138	Definition and eligibility criteria for deafness.	*(6) 300.7 Child with a disability.

- *(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.
- *(5) Developmental delay, “birth to 36 months,” not specifically addressed in federal regulations. Age range in federal regulations—3 through 9.
- *(6) Definition only in federal regulations—eligibility criteria, state specific.

Eligibility Criteria for Students with Disabilities (continued)	
Chapter 392-172 WAC	34 CFR Part 300
WAC 140 Definition and eligibility criteria for hearing impairment.	*(6) 300.7 Child with a disability.
WAC 142 Definition and eligibility criteria for visually impaired/blindness.	*(6) 300.7 Child with a disability.
WAC 144 Definition and eligibility criteria for deaf/blindness.	*(6) 300.7 Child with a disability.
WAC 146 Definition and eligibility criteria for autism.	*(6) 300.7 Child with a disability.
WAC 148 Definition and eligibility criteria for traumatic brain injury.	*(6) 300.7 Child with a disability.
WAC 150 Independent educational evaluation.	*(1) 300.502 Independent educational evaluation.

Documentation of Evaluation	
Chapter 392-172 WAC	34 CFR Part 300
WAC 152 Summary analysis of evaluation data.	*(2)

District Decision	
Chapter 392-172 WAC	34 CFR Part 300
WAC 154 School district or other public agency decision on eligibility.	300.535 Determining eligibility and placement.

Individualized Education Program	
Chapter 392-172 WAC	34 CFR Part 300
WAC 156 Meetings.	*(1) 300.344 and 345 IEP team/participants.
WAC 158 Individualized education program—implementation.	*(1) 300.342 IEPs in effect.
WAC 160 Individualized education program.	*(1) 300.347 and 309 IEP content/ESY.
WAC 162 Physical education required.	300.307 Physical education.
WAC 164 Parent notice of individualized education program meeting—transition services.	*(1) 300.344 and 345 IEP team/participants.
WAC 166 Transition services participants.	*(1) 300.344 IEP team.
WAC 168 Required student participation—transition.	*(1) 300.344 IEP team.

- *(1) Federal requirement revised—WAC needs updating.
- *(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.
- *(6) Definition only in federal regulations—eligibility criteria, state specific.

Service Delivery Options	
Chapter 392-172 WAC	34 CFR Part 300
WAC 170 Initial service delivery—parental consent for initial placement—notice required.	*(1) 300.503 and 505 Notice/consent.
WAC 172 Least restrictive environment.	300.550 General—LRE.
WAC 174 Continuum of alternative service delivery options.	300.551 Continuum.
WAC 176 Transition to preschool program.	*(1) 300.132 Transition—Part C to preschool.
WAC 178 Preschool services.	300.552 Placements—note.
WAC 180 Procedures for establishing educational settings.	*(1) 300.552 Placements.

Evaluation of Progress—Reevaluation	
Chapter 392-172 WAC	34 CFR Part 300
WAC 182 Reevaluation—requirement.	*(1) 300.536 Reevaluation.
WAC 184 Reevaluation—notice requirement.	*(1) 300.503 Prior notice.
WAC 186 Reevaluation—purposes.	*(1) 300.533 Needed evaluation data.
WAC 188 Reevaluation general procedures.	*(1) 300.533 Needed evaluation data.
WAC 190 Reevaluation—notice of results.	*(1) 300.533 and 534 Needed evaluation data/eligibility.

Service Delivery Standards	
Staff Qualifications	
Chapter 392-172 WAC	34 CFR Part 300
WAC 200 Staff qualifications.	300.21 Qualified.
WAC 202 Emergency—temporary out-of-endorsement assignment.	*(1) 300.136 Personnel standards.

Program Standards—Transportation—Facilities—Comparability	
Chapter 392-172 WAC	34 CFR Part 300
WAC 204 Transportation.	*(7) 300.22 Related services.
WAC 206 Facilities.	*(2)
WAC 208 Comparable facilities.	*(2)
WAC 210 Program length.	*(2)
WAC 212 Health or safety standards.	300.3 Regulations that apply.
WAC 214 Administration of medication	*(2)

- *(1) Federal requirement revised—WAC needs updating.
- *(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.
- *(7) Definition only in federal regulations—transportation provisions, state specific.

Service Delivery Settings	
Chapter 392-172 WAC	34 CFR Part 300
WAC 216 Choice and running start programs.	* (2)
WAC 218 Home/hospital instruction.	
WAC 220 Contractual services.	* (2)
WAC 222 Approval of nonpublic and public school agencies.	300.400 Applicability. 300.401 Responsibility of SEA.
WAC 224 School district or other public agency responsibility when contracting for the delivery of services in a nonpublic or public school agency.	300.349 and 401 IEP development and responsibility of SEA.
WAC 226 Residential educational services.	300.302 Residential placement.

Private School Provisions	
Chapter 392-172 WAC	34 CFR Part 300
WAC 228 Out-of-state agencies.	300.401 Responsibility of SEA.

Private School Students—Placed by Parents or Others	
Chapter 392-172 WAC	34 CFR Part 300
WAC 230 Placement of students by parents.	* (1) 300.403 Parental placements.
WAC 232 Definition—“private school student(s) with disabilities.”	300.450 Private school children.
WAC 234 School district or other public agency responsibility for private school special education students.	* (1) 300.455 Services provided.
WAC 236 Determination of needs, numbers of students and types of services.	* (1) 300.454 Services determined.
WAC 238 Service arrangements.	* (1) 300.459 Funds not to benefit.
WAC 240 Personnel in private schools and agencies.	300.460 and 461 Public and private personnel.
WAC 242 Equipment—construction.	* (1) 300.462 Property/equipment.
WAC 244 Prohibition of segregation.	300.458 Separate classes prohibited.
WAC 246 Funds and property not to benefit private schools.	* (1) 300.459 Funds not to benefit.
WAC 248 Existing level of instruction.	* (1) 300.459 Funds not to benefit.

* (1) Federal requirement revised—WAC needs updating.

* (2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.

Procedural Safeguards	
Chapter 392-172 WAC	34 CFR Part 300
WAC 300 General responsibility of public agencies	300.500 General responsibility and definitions.

Notice Requirements—General	
Chapter 392-172 WAC	34 CFR Part 300
WAC 302 When notice must be given	* (1) 300.503 Prior notice.
WAC 304 Parent consent.	* (1) 300.505 Parental consent.
WAC 306 Contents of notice.	* (1) 300.504 Procedural safeguards.

Surrogate Parents	
Chapter 392-172 WAC	34 CFR Part 300
WAC 308 Surrogate parents.	* (1) 300.515 Surrogate parents.

Mediation	
Chapter 392-172 WAC	34 CFR Part 300
WAC 310 Mediation—purpose.	* (1) 300.506 Mediation.
WAC 312 Mediation—definition.	* (1) 300.506 Mediation.
WAC 314 Request for mediation services.	* (1) 300.506 Mediation.
WAC 316 Written mediation agreement.	* (1) 300.506 Mediation.

Citizen Complaint Process	
Chapter 392-172 WAC	34 CFR Part 300
WAC 320 Authority.	* (8)
WAC 322 Purpose.	* (1) 300.660 State complaint procedures.
WAC 324 Definition—complaint.	300.662 Filing a complaint.
WAC 326 Definition—other subgrantee	* (8)
WAC 328 Informing citizens about complaint procedures.	* (1) 300.660 State complaint procedures.
WAC 330 Right to register a complaint.	300.662 Filing a complaint.
WAC 332 Contents of complaint.	300.662 Filing a complaint.
WAC 334 Procedure for filing a complaint.	300.662 Filing a complaint.
WAC 336 Designation of responsible employee.	300.660 State complaint procedures.

* (1) Federal requirement revised—WAC needs updating.

* (8) Performance/assurance standard only—federal or state.

Citizen Complaint Process (continued)	
Chapter 392-172 WAC	34 CFR Part 300
WAC 338 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.	300.661 Minimum procedures.
WAC 340 Complainant right to appeal.	
WAC 342 Complaints against the Superintendent of Public Instruction—designation of responsible employee(s).	*(9) 300.660 State complaint procedures.
WAC 344 Complaints against the Superintendent of Public Instruction—investigation of and response to complaints.	300.661 Minimum procedures.
WAC 346 Appeal to the Secretary of Education in complaints against the Superintendent of Public Instruction.	*(9)

Hearings—General	
Chapter 392-172 WAC	34 CFR Part 300
WAC 350 Right to initiate—purposes.	*(1) 300.507 Due process hearing.
WAC 352 Hearing officers—selection and expenses of—parent assistance.	300.508 Impartial hearing officer.
WAC 354 Hearing rights.	*(1) 300.509 Hearing rights.
WAC 356 Timeline for hearing officer's decision—time and place of hearing.	300.511 Timelines/convenience of hearing.
WAC 358 Prospective application to amendments in Washington Administrative Code affecting hearings.	*(8)
WAC 360 Final decision—appeal to court of law.	*(1) 300.512 Civil action.
WAC 362 Attorneys' fees.	*(1) 300.513 Attorneys' fees.
WAC 364 Student's status during hearing and judicial review processes.	*(1) 300.514 Child status during proceedings.

*(1) Federal requirement revised—WAC needs updating.

*(8) Performance/assurance standard only—federal or state.

*(9) Federal requirement removed.

Disciplinary Exclusion		
Chapter 392-172 WAC		34 CFR Part 300
WAC 370	Disciplinary exclusion—purpose.	*(10)*(11)
WAC 372	Disciplinary exclusion—procedures, continuing district or other public agency responsibility.	*(10)*(11)
WAC 374	Disciplinary exclusion—determination of disability relatedness and/or appropriateness of program.	*(10)*(11)
WAC 376	Disciplinary exclusion—definition of significant change of placement.	*(10)*(11)
WAC 378	Disciplinary exclusion—determination of what constitutes a pattern of exclusion.	*(10)*(11)
WAC 380	Emergency exclusion—dangerous students.	*(10)*(11)
WAC 382	Disciplinary exclusion—bringing a firearm to school.	*(10)*(11)

Aversive Therapy—Safeguards		
Chapter 392-172 WAC		34 CFR Part 300
WAC 388	Aversive therapy	*(2)
WAC 390	Aversive therapy—definition.	*(2)
WAC 392	Aversive therapy—prohibited forms.	*(2)
WAC 394	Aversive therapy—other forms—conditions.	*(2)
WAC 396	Aversive therapy—individualized education program requirements.	*(2)
WAC 398	Aversive therapy—parent complaint process.	*(2)

*(2) WAC not specifically addressed in federal regulations. Regulatory citation shaded.

*(10) New federal requirement.

*(11) Discipline 300.520–529.

Student Records	
Chapter 392-172 WAC	34 CFR Part 300
WAC 400 Definition of “educational record” as used in records rules.	300.560 Definitions.
WAC 402 Definitions used in records rules—“destruction”—“native language”— and “educational agency.”	300.560 Definitions.
WAC 404 Notice to parents.	300.561 Notice to parents.
WAC 406 Opportunity to examine records.	300.501 Opportunity to examine records.
WAC 408 Access rights.	300.562 Access rights.
WAC 410 Record of access.	300.563 Record of access.
WAC 412 Records on more than one student.	300.564 Records on more than one child.
WAC 414 List of types and locations of information.	300.565 List of types/locations of information.
WAC 416 Fees.	300.566 Fees.
WAC 418 Amendment of records at the request of a parent or adult student.	300.567 Amendment of records at parent’s request.
WAC 420 Hearing procedures regarding records.	300.568 and 569 and 570 Hearings/results procedures.
WAC 422 Consent.	300.571 Consent.
WAC 424 Safeguards.	300.572 Safeguards.
WAC 426 Destruction of information.	300.573 Destruction of information.

State Procedures—Requirements—Standards	
State Advisory Council	
Chapter 392-172 WAC	34 CFR Part 300
WAC 500 Advisory council	*(1) *(12)
WAC 502 Interagency agreements	*(1) 300.142 Ensuring services.

*(1) Federal requirement revised—WAC needs updating.

*(12) State advisory panel 300.650–653.

Monitoring—Funding	
Chapter 392-172 WAC	34 CFR Part 300
WAC 504 Monitoring.	300.575 Enforcement.
WAC 506 Use and allocation of Part B funds	*(1) 300.620 and 621 Use of funds/allowable costs.
WAC 508 Definition of “unlawfully received or expended funds.”	*(13)
WAC 510 Child count procedures.	*(13)
WAC 512 Audits.	300.3 Regulations that apply.
WAC 514 Fund withholding.	300.3 Regulations that apply.
WAC 516 Recovery of funds.	300.145 Recovery of funds.
WAC 518 Fund withholdings to enforce parent appeal decisions.	300.3 Regulations that apply.

Private School Requirements	
Chapter 392-172 WAC	34 CFR Part 300
WAC 520 Implementation by state.	300.402 Implementation by SEA.
WAC 522 Students in public or private institutions.	300.554 Children in public or private institutions.
WAC 524 Technical assistance training and monitoring activities.	300.555 and 556 Technical assistance, training, and monitoring.
WAC 526 State responsibility.	300.452 Basic requirement.

Comprehensive System of Personnel Development	
Chapter 392-172 WAC	34 CFR Part 300
WAC 550 Comprehensive system of personnel development.	*(1) *(14)
WAC 552 Definitions.	300.136 Personnel standards.
WAC 554 Scope of system.	*(1) *(14)
WAC 556 Establishment of a comprehensive system of personnel development advisory committee.	*(1) *(14)
WAC 558 Annual needs assessment.	*(1) *(14)
WAC 560 Data system on personnel and personnel development.	*(1) *(14)

*(1) Federal requirement revised—WAC needs updating.

*(13) Annual report of children served—300.750–754.

*(14) CSPD 300.380–382.

Comprehensive System of Personnel Development (continued)	
Chapter 392-172 WAC	34 CFR Part 300
WAC 562 Other sources of annual needs assessment data.	*(1) *(14)
WAC 564 Report of current and projected personnel needs.	*(1) *(14)
WAC 566 Administration of continuing education.	*(1) *(14)
WAC 568 Personnel development plan.	*(1) *(14)
WAC 570 Provision of technical assistance.	*(1) *(14)
WAC 572 Personnel standards.	*(1) 300.136 Personnel standards.
WAC 574 Professional standards review.	*(1) 300.136 Personnel standards.

Funding Procedures—Standards	
Annual School District Application—Requirements	
Chapter 392-172 WAC	34 CFR Part 300
WAC 580 Annual applications—contents.	*(1) 300.180 Conditions of assistive.
WAC 582 Collaborative applications.	*(1) 300.190 and 192 Joint eligibility.
WAC 584 Review and amendment process.	*(1) 300.182 Amendments.
WAC 586 Notification of grant award.	300.3 Regulations that apply.
WAC 588 Availability of application and public participation.	*(1) 300.242 Public information.
WAC 590 Denial of applications—opportunity for hearing.	300.196 Notification/ineligible.

Miscellaneous Program Requirements	
Chapter 392-172 WAC	34 CFR Part 300
WAC 592 Records related to grant funds.	300.3 Regulations that apply.
WAC 594 Program coordination	300.3 Regulations that apply.

*(1) Federal requirement revised—WAC needs updating.

*(14) CSPD 300.380–382.

TABLE C

**Special Education: Chapter 392-172 WAC Rules
Not Specifically Addressed in 34 CFR Part 300**

Chapter 392-172 WAC	Comment(s)
Students—General—Definitions WAC 040 Current evaluation.	Federal regulations do not specify time frames for obtaining evaluation data. However, the evaluation procedures under 300.532 provide for administering tests “. . . in accordance with any instructions provided by the producer of the tests.” This could include test/retest provisions that include time frames.
WAC 062 Terms related to transition services.	Provides technical assistance to school districts on implementing the federal requirements for transition. The state’s definition does not impose any additional requirements on local school districts.
Student Specific Procedures—Identification WAC 100 Childfind.	Federal regulations do not specify childfind activities (i.e., posting notices in school buildings). State rules are permissive as to the actual activities and allow school districts to choose their own ways of meeting this requirement.
WAC 102 Preevaluation procedures—referrals.	Federal regulations do not address procedures for the submission of written or verbal referrals for special education. However, in general, as part of the childfind system, school districts are required to identify, locate, and evaluate all students with disabilities within their boundaries. This would include all public and private sources.

Chapter 392–172 WAC	Comment(s)
Eligibility Criteria for Students with Disabilities	
WAC 114 Definition/eligibility criteria developmentally delayed.	Developmentally delayed children birth to 36 months of age are not specifically addressed in federal regulations. However, under 300.123 and 124, full educational opportunity goal and timetable, the state is required to have on file with the U.S. Secretary of Education detailed policies and procedures through which the state has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, including a detailed timetable for accomplishing the goal.
WAC 118 Definition and eligibility criteria for seriously behaviorally disabled.	In general, federal regulations define disabling conditions, but do not specify the eligibility criteria for each. The federal definitions themselves, however, do provide guidance on the various areas to be evaluated. For example, under the category of mental retardation, the definition refers to “. . . significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.”
WAC 120 Definition and eligibility criteria for communication disordered.	
WAC 122 Definition and eligibility criteria for orthopedically impaired.	
WAC 124 Definition and eligibility criteria for health impaired.	
WAC 130 Discrepancy tables for determining severe discrepancy under WAC 392-172-132.	
WAC 132 Method for documenting severe discrepancy.	
WAC 134 Definition and eligibility criteria for mental retardation.	
WAC 138 Definition and eligibility criteria for deafness.	
WAC 140 Definition and eligibility criteria for hearing impairment.	The state’s eligibility criteria for mental retardation requires that an evaluation be conducted in the areas of intellectual functioning, adaptive behavior, developmental history, and academic achievement. State eligibility criteria is consistent with federal definition.
WAC 142 Definition and eligibility criteria for visually impaired/blindness	
WAC 144 Definition and eligibility criteria for deaf/blindness	Furthermore, under 300.532, evaluation procedures, a local school district is required to assess a student “. . . in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.”
WAC 146 Definition and eligibility criteria for autism.	
WAC 148 Definition and eligibility criteria for traumatic brain injury.	

Documentation of Evaluation	Comment(s)
<p>WAC 152 Summary analysis of evaluation data</p>	<p>In order to ensure the consistent application of federal definitions for disabling conditions statewide, the OSPI developed standardized eligibility criteria for use by local school districts.</p> <p>Federal regulations do not specifically address the development of a written summary analysis of evaluation data. However, under 300.535, procedures for determining eligibility and placement, each local school district is required to:</p> <p>“(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and (2) Ensure that information obtained from all of these sources is documented and carefully considered.”</p> <p>In addition, 300.534, determination of eligibility, the school district must “. . . provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.”</p> <p>The state’s “summary analysis of evaluation data” is used to meet the federal requirements cited above.</p>
<p>Program Standards Transportation—Facilities— Comparability</p>	
<p>WAC 204 Transportation.</p>	<p>Transportation, as a related service, is defined in federal regulations. Policy statements involving issues such as methods of transportation, welfare of students, and bus aides and drivers are state specific.</p>
<p>WAC 206 Facilities. WAC 208 Comparable facilities. WAC 210 Program length.</p>	<p>Construction/comparability of facilities and program length are not specifically addressed under Part B of IDEA. These items are covered under other federal and state regulations.</p>
<p>WAC 214 Administration of medication.</p>	<p>State policy on the administration of medication covers all students, not just those with disabilities.</p>

Service Delivery Settings	Comment(s)
WAC 216 Choice and Running Start programs.	The state's choice and Running Start programs are not specifically addressed under Part B of IDEA.
WAC 218 Home/hospital instruction.	Home/hospital instruction are both included on the continuum of alternative placements in federal regulations. Policy statements on the implementation of home/hospital instruction are state specific.
Aversive Therapy—Safeguards	
WAC 388 Aversive therapy.	Federal regulations do not specifically address aversive therapy. However, under 300.346, the IEP team is required to consider “strategies” for dealing with behavior that impedes the learning of the child or others. Aversive therapy, if appropriate, could be used to meet this federal requirement.
WAC 390 Aversive therapy—definition.	
WAC 392 Aversive therapy—prohibited forms.	
WAC 394 Aversive therapy—other forms—conditions.	
WAC 396 Aversive therapy—individualized education program requirements.	
WAC 398 Aversive therapy—parent complaint process.	