

NEW SECTION

WAC 392-172A-01031 Behavioral intervention plan. A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan describes:

(1) The pattern of behavior(s) that impedes the student's learning or the learning of others;

(2) The conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;

(3) The positive behavior interventions and supports to:

(a) Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;

(b) Maximize consistency of the implementation of the positive behavior interventions across the student's school-sponsored instruction or activities.

(4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

NEW SECTION

WAC 392-172A-01092 Imminent. Imminent as defined in RCW 70.96B.010 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

NEW SECTION

WAC 392-172A-01107 Isolation. Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.

NEW SECTION

WAC 392-172A-01109 Likelihood of serious harm. Likelihood of serious harm as defined in RCW 70.96B.010 means:

(1) A substantial risk that:

(a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself;

(b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(2) The person has threatened the physical safety of another and has a history of one or more violent acts.

NEW SECTION

WAC 392-172A-01142 Positive behavioral interventions. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors.

NEW SECTION

WAC 392-172A-01162 Restraint. Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely.

NEW SECTION

WAC 392-172A-01163 Restraint device. Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. Restraint device does not mean a seat harness used to transport students safely. This section shall not be construed as encouraging the use of these devices. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student.

NEW SECTION

WAC 392-172A-02076 Prohibition of aversive interventions. (1) School district personnel are prohibited from using aversive interven-

tions with a student eligible for special education, and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm as defined in WAC 392-172A-01092 and 392-172A-01109.

(2) There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to prohibit uniformly the use of certain interventions with students eligible for special education as follows:

(a) Electric current. No student may be stimulated by contact with electric current.

(b) Food services. A student who is willing to consume subsistence food or liquid when the food or liquid is customarily served must not be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(c)(i) Force and restraint in general. A district must not use force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law. See RCW 9A.16.100, which prohibits the following uses of force or restraint including:

(A) Throwing, kicking, burning, or cutting a student.

(B) Striking a student with a closed fist.

(C) Shaking a student under age three.

(D) Interfering with a student's breathing.

(E) Threatening a student with a deadly weapon.

(F) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(ii) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(d) Hygiene care. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(e) Isolation. A student must not be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-02110.

(f) Medication. A student must not be denied or subjected to an unreasonable delay in the provision of medication.

(g) Noise. A student must not be forced to listen to noise or sound that the student finds painful.

(h) Noxious sprays. A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(i) Physical restraints. A student must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A-02110.

(j) Taste treatment. A student must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(k) Water treatment. A student's head must not be partially or wholly submerged in water or any other liquid.

NEW SECTION

WAC 392-172A-02105 Emergency response protocols. (1) In the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section, the parent and the school district may develop emergency response protocols. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows:

(a) The student's parent or guardian provides written agreement, in advance, to the emergency response protocols to be adopted;

(b) The emergency response protocols specify:

(i) The emergency conditions under which isolation, restraint, or restraint devices, if any, will be used;

(ii) The type of isolation, restraint, and/or restraint device, if any, that may be used;

(iii) The staff or contract positions permitted to use isolation, restraint, and/or restraint devices with the student and the required training, updated annually, for the staff or contracted position to use the isolation, restraint, and/or restraint device;

(iv) Any other special precautions that must be taken.

(c) Any use of isolation, restraint, and/or restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and certified in the use of isolation, restraint, or a restraint device.

(2) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485, regardless of whether the use of isolation, restraint, or restraint device is included in the student's emergency response protocols.

(3) Nothing in this section is intended to limit the application of a school district's policy developed under RCW 28A.600.485 to protect the general safety of students and staff from an imminent likelihood of serious harm.

NEW SECTION

WAC 392-172A-02110 Isolation and restraint—Conditions. Any use of isolation, restraint, and/or restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The limited use of isolation, restraint, or restraint device not prohibited in WAC 392-172A-02076 is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Isolation. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student at all times.

(e) Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student.

(f) Any staff member or other adults using isolation must be trained and certified in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(2) Restraint. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint must be discontinued as soon as the likelihood of harm has dissipated.

(b) The restraint shall not interfere with the student's breathing.

(c) Any staff member or other adults using a restraint must be trained and certified in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(3) Restraint device. The use of a restraint device as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint device must be discontinued as soon as the likelihood of harm has dissipated.

(b) The restraint device shall not interfere with the student's breathing.

(c) Either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student.

(d) Any staff member or other adults using a restraint device must be trained and certified in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(4) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b)(i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and (~~districtwide~~) district-wide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or (~~districtwide~~) district-wide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) (~~Aversive interventions, if any, required for the student.~~

~~(i)) Behavioral intervention plan, if determined necessary by the IEP team for the student to receive FAPE.~~

(i) Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE, and the parent and the school district agree in writing.

(j) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

~~((+j))~~ (k) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(ii) The transition services including courses of study needed to assist the student in reaching those goals.

~~((+k))~~ (l) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(m) The school district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03110 Development, review, and revision of IEP.

(1) In developing each student's IEP, the IEP team must consider:

(a) The strengths of the student;

(b) The concerns of the parents for enhancing the education of their student;

(c) The results of the initial or most recent evaluation of the student; and

(d) The academic, developmental, and functional needs of the student.

(2)(a) When considering special factors unique to a student, the IEP team must:

(i) Consider the use of positive behavioral interventions and supports, ~~((and other strategies,))~~ to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

(ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;

(iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (in-

cluding an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(v) Consider whether the student needs assistive technology devices and services.

(b) A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:

(i) Appropriate positive behavioral interventions and supports ((and other strategies)) for the student; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.

(c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).

(d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section. (~~In the case of a student whose behavior continues to impede the progress of the student or others despite the use of positive behavioral support strategies: Consider the need for aversive in-~~

~~terventions only as a last resort, if positive behavior supports have been used in accordance with the student's IEP, the use of positive behavior supports has been documented to be ineffective, and the IEP team, consistent with WAC 392-172A-03120 through 392-172A-03135 determines that an aversive intervention plan is necessary for the student.)~~)

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) Reconsideration of the decision under RCW ((~~34.05.070~~)) 34.05.470 is not allowed under Part B of the act due to the timelines for issuing a final decision.

(3) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(4) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05125 Student's status during proceedings. (1) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate (~~((through the final decision or during the pendency of the due process hearing))~~), that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-172A-03120 Aversive interventions definition and purpose.
- WAC 392-172A-03125 Aversive intervention prohibitions.
- WAC 392-172A-03130 Aversive interventions—Conditions.
- WAC 392-172A-03135 Aversive interventions—Individualized education program requirements.