



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 18, 2020

TIME: 9:00 AM

WSR 20-23-116

Agency: Office of Superintendent of Public Instruction (OSPI)

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-03-151 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapters 392-172A and 392-173 WAC; WAC 392-140-60105 through 392-140-685.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 13, 2021	3:30pm	Webinar via Zoom (call-in option will be available)	Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit OSPI's website at https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity . For questions, please email: kristin.murphy@k12.wa.us
January 20, 2021	9:00am	Webinar via Zoom (call-in option will be available).	(see information in Comment section above)

Date of intended adoption: January 25, 2021_ (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Glenna Gallo, Asst. Superintendent, Special Education, OSPI

Address: OSPI, PO Box 47200, Olympia, WA 98504

Email: Glenna.gallo@k12.wa.us

Fax: 360-586-0247

Other: www.k12.wa.us

By (date) January 20, 2021

Assistance for persons with disabilities:

Contact Kristin Murphy

Phone: 360-725-6133

Fax: 360-754-4201

TTY: 360-664-3631

Email: Kristin.murphy@k12.wa.us

Other:

By (date) January 6, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal seeks to amend and add sections to chapters 392-172A and 392-173 WAC, and WAC 392-140-60105 through -685, for the purpose of addressing changes to federal law and requirements, clarifying existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services, and adding requirements from ESHB 1130 (2020). In addition, the proposal makes housekeeping changes to correct typographical errors and reorganize WACs in this chapter for ease of reference, and other rule changes that are technical in nature.

Reasons supporting proposal: OSPI has the authority under state statute to develop administrative rules to implement federal statutes and state regulations governing special education services to students. These proposed rules amend and add new sections to OSPI's current special education rules to: (1) address changes to federal law and requirements; (2) clarify existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services, including new requirements under ESHB 1130 (2019); and (3) make housekeeping changes to correct typographical errors, reorganize WACs for ease of reference, and make other rule changes that are technical in nature.

OSPI shared these draft rules and solicited input from the public and stakeholders over the summer of 2020. This review period was lengthened due to the COVID-19 pandemic across the state.

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

Statute being implemented: RCW 28A.155 (Special Education)

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: 34 CFR 300 (IDEA)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Language within these WACs was revised to meet current standards, language, PESB requirements, and the ESSA. Additionally, clarification on issues that are frequently found to be noncompliant was added, including eligibility, preschool LRE/placement, LRE/placement for 5 year-olds enrolled in Kindergarten, timelines for school districts responding to a referral, state home/hospital versus IDEA home/hospital, updates to restraint or isolation requirements, and language needs of parents. These rules have been revised since the draft released summer 2020 based on stakeholder input.

Name of proponent: (person or organization) Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Scott Raub	OSPI Special Education	360-725-6075
Implementation:	Glenna Gallo	OSPI Special Education	360-725-6075
Enforcement:	Glenna Gallo	OSPI Special Education	360-725-6075

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:

Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.030.

Explanation of exemptions, if necessary: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: 11/17/20

Name: Chris Reykdal

Title: State Superintendent of Public Instruction

Signature:



OSPI Rule Making Public Hearings

Public Hearings and Comment Period for Special Education Rule Making

OSPI will hold two public hearings for proposed changes to rules related to Special Education. Rules are also known as Washington Administrative Code (WAC). Changes to the following WAC chapters and sections are being considered:

- Chapter 392-172A WAC
- Chapter 392-173 WAC
- WAC 392-140-60105 through-392-140-695

The purpose of the hearings and comment period is to provide the public with an opportunity to comment on the proposed changes to the WAC language. Please review the proposed changes before submitting comments or testifying.

Participating in the Public Hearing and Comment Period

Due to public health concerns caused by the Covid-19 virus, the public hearings will be held online, via Zoom. An in-person hearing (physical location) will not be provided.

The public can participate in the rules hearing and comment period by:

- 1. Submitting written comments by January 20, 2021:**
 - Email: Glenna.gallo@k12.wa.us (please include "Rules" in email subject line)
 - Mail: OSPI, Attn: Glenna Gallo, PO Box 47200, Olympia, WA 98504
 - Fax: 360-586-0247
- 2. Testifying during a public hearing.** Please click on Zoom link below for the hearing you plan to attend. This will take you to a registration screen. Once registered, you will be provided the hearing link.
 - [January 13, 2021 at 3:30 p.m.](#)
 - [January 20, 2021 at 9:00 a.m.](#)

The public is welcome to attend both hearings. If you plan to testify, please do so during one of the hearings. In order to allow all those interested a chance to testify, each person will have up to five (5) minutes to comment on the proposed changes during the hearing. You may also submit written comments by January 20, 2021.

For questions or concerns about Special Education, not related to the proposed rules changes, please contact OSPI Special Education at: speced@k12.wa.us or by phone: 360-725-6075, or TTY: 360-664-3631. For questions about the rules hearing process, please contact the OSPI Rules Coordinator, Kristin Murphy, at Kristin.murphy@k12.wa.us.

