

OSPI Rule Making Public Hearing

Public Hearing and Comment Period for Rule Making

OSPI will hold a public hearing for proposed changes to rules, also known as Washington Administrative Code (WAC). Changes to the following WAC chapters or sections are being considered:

- WAC 392-121-136
- WAC 392-122-221
- Chapter 392-700 WAC

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

Participating in the Public Hearing and Comment Period

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

You can participate in the rules hearing and comment period by:

1. **Submitting written comments by Wednesday, June 22, 2022:**
 - **Email:** becky.mclean@k12.wa.us (please include "Rules" in email subject line)
 - **Mail:** OSPI, Attn: Becky McLean, PO Box 47200, Olympia, WA 98504
2. **Attend the public hearing (webinar).** Please follow the link below to register to participate in the hearing. Once registered, you will receive the hearing link via email.
 - [Wednesday, June 22, 2022 at 10:00am \(registration link\)](#)
 - If you plan to testify during the hearing, please indicate that when you register. For those testifying, each person will have up to five (5) minutes to comment during the hearing. Please ensure your comments are specific to the proposed WAC language.

For questions about the rules hearing process, please contact the OSPI Rules Coordinator, Kristin Murphy, at Kristin.murphy@k12.wa.us.



WAC 392-121-136 Limitation on enrollment counts. Enrollment counts (~~(pursuant to)~~) under WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 1.8 FTE.

(c) Subject to (b) of this subsection(~~(7)~~):

(i) A student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

(ii) A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student.

(iii) A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

(iv) A student enrolled in an institutional education program under WAC 392-122-205 and a youth engagement program under chapter 392-700 WAC can be claimed up to a combined 2.0 FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start (~~(and)~~), a maximum of a 1.0 full-time equivalent for the student's high school enrollment, and a maximum of a 1.0 full-time equivalent for institutional education funding under WAC 392-122-225 subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old pre-school student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

WAC 392-122-221 State institutional education program—Enrollment exclusions. (1) The following may not be counted as an enrolled institutional education program student:

(a) A person whose educational activity under WAC 392-122-212 has terminated.

(b) A person who has transferred to another institution, school district, or charter school.

(c) A person residing in a state institution who:

(i) Has not engaged in educational activity under WAC 392-122-212 in the past five school days, excluding days of excused absence;

(ii) Has not engaged in educational activity in the past ten school days under WAC 392-122-212, including days of excused absence; or

(iii) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support (~~pursuant to~~) under chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(2) When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

(3) As used in this section, "excused absence" means an absence from scheduled educational activity which certificated staff determine to be due to one or more of the following:

(a) Illness;

(b) Attendance in court; or

(c) Meeting with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service provider.

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. In-person face-to-face interaction is required for the month that the student was claimed for the first time. Thereafter, the interaction may include an option for digital-synchronous interaction when a student:

(a) Requests digital-synchronous options; or

(b) Requires digital-synchronous access as determined by program staff. If, after each three months of claimed enrollment, the student has not earned an indicator of academic progress through the utilization of digital-synchronous interaction, then the interaction must return to in-person face-to-face until an indicator of academic progress is earned.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is ~~((one hundred))~~ 100 level or above.

(7) **"Consortium"** means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.

(8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(11) **"Credential"** is identified as one of the following:

(a) High school diploma; or

(b) Associate degree.

(12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and

392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than (~~ten~~) 10 count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of (~~eleven~~) 11 count days or more.

(13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) **"Indicator of academic progress"** means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Earns at minimum a 0.25 high school credit;

(b) Earns at minimum a whole college credit;

(c) Receives a college certificate after completion of a college program requiring at least (~~forty~~) 40 hours of instruction;

(d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least (~~forty~~) 40 hours of instruction;

(e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

(f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

(g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(i) Successfully completes college readiness course work with documentation of competency attainment;

(j) Successfully completes job search and job retention course work with documentation of competency attainment;

(k) Successfully completes a paid or unpaid cooperative work based learning experience of at least (~~forty-five~~) 45 hours. This experience must meet the requirements of WAC 392-410-315(2);

(l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(m) Successfully completes an English as a second language (ESL) class;
(n) Successfully completes an adult basic education (ABE) class;
or

(o) Successfully completes a series of short-term industry recognized certificates equaling at least (~~forty~~) 40 hours.

(16) "Institutional education program" means a program that meets a definition under WAC 392-122-205.

(17) "Instructional staff" means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(~~(17)~~) (18) "Letter of intent" means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(~~(18)~~) (19) "Noninstructional staff" is any person employed in a position that is not an instructional staff as defined under subsection (~~(16)~~) (17) of this section.

(~~(19)~~) (20) "OSPI" means the office of superintendent of public instruction.

(~~(20)~~) (21) "Program" means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(~~(21)~~) (22) "School year" is the (~~twelve-month~~) 12-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(~~(22)~~) (23) "Scope of work" means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(~~(23)~~) (24) "Resident district" means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(~~(24)~~) (25) "Weekly status check" means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

~~((25))~~ (26) **"Tribal compact school"** means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.

~~((26))~~ (27) **"Charter school"** means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

AMENDATORY SECTION (Amending WSR 18-17-031, filed 8/6/18, effective 9/6/18)

WAC 392-700-035 Student eligibility. (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under ~~((twenty-one))~~ 21 years of age at the beginning of the school year but whose ~~((sixteenth))~~ 16th birthday occurs on or before September 1st;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than ~~((twenty-four))~~ 24 months from their cohort graduation date and has earned less than ~~((sixty-five))~~ 65 percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than ~~((sixty-five))~~ 65 percent. A cohort is the group of students that enter the ninth grade in the same school year;

(ii) A student who is between ~~((twelve and twenty-four))~~ 12 and 24 months from their cohort graduation date and has earned less than ~~((seventy))~~ 70 percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than ~~((seventy))~~ 70 percent;

(iii) A student who is less than ~~((twelve))~~ 12 months from their cohort graduation date or who has passed their cohort graduation date by less than ~~((twelve))~~ 12 months and has earned less than ~~((seventy-five))~~ 75 percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than ~~((seventy-five))~~ 75 percent;

(iv) A student who is passed their cohort graduation date by ~~((twelve))~~ 12 months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in (c) of this subsection, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school classes that receive state basic education funding, excluding an approved skill center program, a Jobs for Washington's Graduates program, ~~((or))~~ run-

ning start program, or institutional education program under WAC 392-122-205;

(f) Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident district as defined in WAC 392-700-015(~~(+23+)~~) (24) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is (~~twenty-one~~) 21 years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-042 Program operating agreements and OSPI approval.

(1) Districts, tribal compact schools, charter schools, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

Regardless of the model of operation, the state funding is allocated to the district, tribal compact school, charter school, or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district, tribal compact school, or charter school may enter into one of the following models of operations through the OSPI approval process:

(a) Directly operate a program where the services are provided by the district, tribal compact school, or charter school resources;

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, tribal compact schools, charter schools, colleges, and/or agencies by executing a consortium agreement that is signed by all members.

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts including tribal compact schools and charter schools, and reduce the administrative burden. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(a) Take the lead in organizing and managing the regional consortium;

(b) Provide information and technical assistance to districts, tribal compact schools, and charter schools interested in participat-

ing in the consortium and providing the opportunity for their students to enroll;

(c) Develop scopes of work with agencies and colleges to operate the programs;

(d) Provide oversight and technical assistance to the program to align with all requirements of this chapter and the delivery of quality programming;

(e) Assist the program with the preparation of required reports, enrollment data, and course records needed to enroll students, award credit, and report FTE and performance to OSPI;

(f) Facilitate data entry of required student data into each district, tribal compact school, or charter school's statewide student information system related to enrollment; and

(g) Work with the districts, tribal compact schools, and charter schools to facilitate the provision of special education, accommodations under Section 504 of the Rehabilitation Act of 1973, and transitional bilingual instruction pursuant to WAC 392-700-147.

(4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, tribal compact school, charter school, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts, tribal compact school, or charter school must be approved.

(c) Any program which meets the definition of an online school program in RCW 28A.250.010 must be approved as an online provider, pursuant to RCW 28A.250.060(2).

(6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(7) OSPI will provide model documents that can be modified to include district-, tribal compact school-, charter school-, college-, or agency-specific language and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(8) Upon initial approval, OSPI will specify the duration of the approval and indicate the necessary criteria to obtain reapproval.

(9) After receiving a notice of approval, OSPI will assign a code to be used when reporting students enrolled in the program.

(10) This chapter does not affect the authority of districts, tribal compact schools, and charter schools under RCW 28A.150.305, 28A.320.035, or any other provision of law to contract for educational services other than reengagement programs as defined by WAC 392-700-015(~~(+20)~~) (21).

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-160 Reporting of student enrollment. (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

- (a) Met all eligibility criteria pursuant to WAC 392-700-035;
- (b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct-funded technical college;
- (c) Enrolled in an approved program pursuant to WAC 392-700-042;
- (d) For continuing students, met the attendance period requirement pursuant to WAC 392-700-015(3);
- (e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(~~(+24)~~) (25);
- (f) Has not withdrawn or been dropped from the program on or before the monthly count day;
- (g) Is not enrolled in course work that has been reported by a college for postsecondary funding;
- (h) (~~Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;~~
~~(i)~~) Is not enrolled in a high school class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;
- (~~(+j)~~) (i) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, (~~(+e)~~) running start, or institutional education programs, does not exceed the FTE limitation (~~pursuant to~~) under WAC 392-121-136; and
- (~~(+k)~~) (j) A student's enrollment in the program is limited to the following:
 - (i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.
 - (ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.
- (2) For all below (~~(one hundred)~~) 100 level classes, the student enrollment is dependent upon attaining satisfactory progress.
 - (a) Satisfactory progress is defined as the documented attainment of at least one indicator of academic progress identified in WAC 392-700-015(~~(+15)~~) (16).
 - (b) Continuing students and returning students who, after being claimed for state funding for three count days excluding the September count day, have not earned an indicator of academic progress cannot be claimed for state funding until an indicator of academic progress is earned.
 - (i) During this reporting funding exclusion period, the program may permit the student to continue to attend;
 - (ii) When the student achieves an indicator of academic progress, the student may be claimed for state funding on the following count day; and
 - (iii) Rules governing the calculation of the three count day period are:
 - (A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.
 - (B) The three count days may occur in two different school years, if the student is enrolled in consecutive school years; and

(C) The three count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below (~~one hundred~~) 100 level classes, student enrollment will be reported as 1.0 FTE on each monthly count day.

Enrollment in below (~~one hundred~~) 100 level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than (~~fifteen~~) 15 college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than (~~fifteen~~) 15 college credits, the FTE is calculated by dividing the enrolled college credits by (~~fifteen~~) 15.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.