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To: Interested Persons

From: Glenna Gallo, Assistant Superintendent for Special Education Office of Superintendent of Public Instruction

Subject: Response to Stakeholder Comments Regarding Pre-Proposal for Revisions to Chapter 392-172A WAC Rules for the Provision of Special Education

The Special Education Division of the Office of Superintendent of Public Instruction (OSPI) filed a CR-101 (Pre-Proposal Statement of Inquiry) on January 21, 2020 (WSR 20-03-151) providing notice of the intent to consider rulemaking to revise Chapter 392-172A of the Washington Administrative Code (WAC) regarding the provision of special education services.

OSPI initiated the formal public comment period by filing a CR-102 (Notice of Proposed Rule Making) on November 18, 2020 (WSR 20-23-116). Public hearings on the proposed revisions to Chapter 392-172A WAC (as well as Chapter 392-173 and WAC 392-140-60105 through-392-140-695) are currently scheduled for January 13, 2021 at 3:30 pm and January 20, 2021 at 9:00 am. OSPI is also presently accepting all written comments via mail, fax, and e-mail through January 20, 2021. Additional information is available at [OSPI - Rulemaking Activity](#).

In preparation for filing a CR-102 (Notice of Proposed Rule Making), OSPI provided stakeholders from across the state of Washington with an opportunity to submit feedback and commentary on possible revisions to Chapter 392-172A WAC. OSPI appreciates the many thoughtful comments and suggestions received. This document summarizes stakeholder input in each section and includes an explanation of the actions taken in relation to the proposed rules now open for public comment. Any responses and additional comments are welcomed through the formal public comment period.

A. WAC 392-172A-01035. Child with a disability or student with a disability.

Comment Summary	Response
1. One commenter noted that this section uses the terms "disability" "difference" "disorder" and "impairment" seemingly interchangeably.	Proposed rule amended. OSPI's proposed rule changes now attempts to reflect culturally appropriate language in this section and throughout Chapter 392-172A WAC.

Comment Summary	Response
<p>2. One commenter suggested changing the age limit from eight to nine years old for the category of developmental delay and amending WAC 392-172A-01035(2)(d)(i)(B) to include:</p> <p><u>“PROVIDED the deviations described in subsection (2)(d)(i) of this section are solely for determining eligibility based on developmental delay and do not limit the special education and related services that an eligible student may receive.”</u></p>	<p>OSPI’s proposed changes to WAC 392-172A-01035(2)(d) include the commenter’s suggested changes to the age limit and incorporates existing language from the Individuals with Disabilities Education Act (IDEA). OSPI, furthermore, believes the addition of WAC 392-172A-01035(1)(e) to the proposed rules sufficiently addresses the commenter’s suggested language since the purpose of an evaluation for special education services is for more than establishing an eligibility category and would apply across all categories, not just to the category of developmental delay. OSPI can also address how the commenter’s suggestions specifically apply to the developmental delay category through guidance and technical assistance to the field.</p>

B. WAC 392-172A-01109. Likelihood of serious harm.

Comment Summary	Response
<p>1. One commenter suggested changing the definition of “likelihood of serious harm” to align with federal guidance.</p>	<p>No action taken. OSPI cannot change this language through the rulemaking process. The definition of “likelihood of serious harm” is included in the language of RCW 71.05.020 which is referenced under RCW 28A.600.485. The prior statutory definition referencing RCW 70.96B.010 was repealed and recodified pursuant to the Community Behavioral Health Services Act of 2019 (SSB 5380). The commenter’s request requires legislative action.</p>

C. (New Section) WAC 392-172A-01152. Regular early childhood program.

Comment Summary	Response
<p>1. Multiple commenters requested adding the definition of a “regular early childhood program” to Chapter 392-172A WAC that aligns with the definition used by the US</p>	<p>New section added. OSPI agrees with commenters and has proposed a definition of “regular early childhood program” under WAC 392-172A-01152 that aligns with OSEP guidance that clarifies existing requirements.</p>

Comment Summary	Response
Department of Education’s Office of Special Education Programs (OSEP).	

D. WAC 392-172A-01155. Related services.

Comment Summary	Response
<p>1. One commenter stated: “It would be good to refer to American Sign Language (ASL) specifically in the [WAC 392-172A-01155(3)(d)(i)]. Also, I saw no reference for qualifications established by PESB for sign language proficiency for interpreters. This section should probably start with American Sign Language as that is the predominant form of translation services provided for deaf/hard of hearing students. [...] (i) Oral transliteration services, cued language transliteration services, <u>American</u> sign language transliteration and interpreting services[...].”</p>	<p>No action taken; however, OSPI will reconsider based on additional comments. OSPI believes WAC 392-172A-01155(3)(d)(i) should remain broadly applicable to all types of communication needs. WAC Section 392-172A-02090(1)(g) provides a reference to qualifications established by the Professional Educator Standards Board (PESB) for sign language proficiency for interpreters.</p>

E. (New Section) WAC 392-172A-01197. Universal design for learning.

Comment Summary	Response
<p>1. One commenter suggested that the definition of Universal Design for Learning (UDL) reflect the federal definition as included in Every Student Succeeds Act (ESSA) and should include additional language supporting how UDL looks when operationalized. The commenter also stated that this definition should be reflected in the WAC applicable to general education in order to ensure consistency between general education and special education and to demonstrate that UDL is at its core a part of general education.</p>	<p>OSPI believes that the addition of WAC 392-172A-01197 to the proposed rules sufficiently includes the commenter’s suggestions regarding alignment with the federal definition under ESSA. Chapter 392-172A WAC, however, is applicable only to students eligible for special education services. This section is not the appropriate chapter of the state regulations to address definitions which apply to all students.</p>
<p>2. One commenter mentioned that the definition of UDL seems unrelated to any requirement.</p>	<p>No action taken. OSPI believes that it is not necessary for a definition included in this chapter to be applicable to a specific requirement in order to be useful (e.g., WAC 392-172A-01195).</p>

F. WAC 392-172A-02000. Students' rights to a free appropriate public education (FAPE).

Comment Summary	Response
<p>1. One commenter suggested adding language to WAC 392-172A-02000 clarifying that for students ages 3 to 5 years old, settings for FAPE include programs with at least 50 percent non-disabled peers and could include public or private setting, per federal guidance.</p>	<p>OSPI believes the commenter's request for clarifying language has greater applicability to the continuum of alternative placements available to eligible students. The proposed rule under WAC 392-172A-02055 has been amended consistent with commenter's suggestion.</p>

G. WAC 392-172A-02050. Least restrictive environment.

Comment Summary	Response
<p>1. One commenter suggested adding a new subsection to WAC 392-172A-02050 in order to clarify the diversity of settings allowed in a preschool setting and explicitly call out the 50 percent threshold that OSEP uses for data collection:</p> <p>"(2) For children ages 3–5, general education environment refers to education in a regular early childhood program with at least a 50 percent non-disabled peers, regardless of whether the LEA operates public preschool programs for children without disabilities. An LEA may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child-care facility, or in the child's home."</p>	<p>Proposed rule amended. OSPI's proposed changes to WAC 392-172A-02050 now includes language to clarify the applicability of least restrictive environment to preschool settings:</p> <p><u>"(3) The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in the least restrictive environment where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local education agency operates public preschool programs for children without disabilities.</u></p> <p><u>(4) For children ages three to five, a general education environment is a regular early childhood program."</u></p> <p>OSPI agrees with commenter and has proposed a definition of "regular early childhood program" under WAC 392-172A-01152 that aligns with OSEP guidance that clarifies existing requirements.</p> <p>The proposed changes under WAC 392-172A-02055 have also been amended consistent with commenter's suggestion to clarify the continuum of alternative</p>

Comment Summary	Response
	placements available to eligible preschool students.
2. One commenter suggested adding clarity for families when they are seeking the least restrictive environment for their preschool aged children and making this process reflect federal guidance.	See response to G-1 . OSPI's proposed rule changes have been amended consistent with the commenter's suggestion.

H. WAC 392-172A-02055. Continuum of alternative placements.

Comment Summary	Response
<p>1. One commenter proposed adding a new subsection to WAC 392-172A-02055 that clarifies the continuum of alternative placements for children ages three to five:</p> <p>"(c) If the LEA does not offer a public preschool program, or offers limited access for students with disabilities, particularly for 3-year-olds, the LEA must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs; enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; or providing home-based services."</p>	<p>Proposed rule amended. OSPI's proposed changes to WAC 392-172A-02055 now clarifies the applicability of the rule to all eligible students ages three to twenty-one years old:</p> <p>"1) Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students <u>eligible for special education services between the ages of three and twenty-one years old</u>.</p> <p>(2) The continuum required in this section <u>for eligible students who are kindergarten (including five year olds in kindergarten) through age twenty-one</u> must:</p> <p>(a) Include the ((alternative)) placements listed in the definition of special education <u>services</u> in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and</p> <p>(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.</p> <p><u>(3) The continuum of alternative placements in a public agency providing special education and related services to a preschool</u></p>

Comment Summary	Response
	<p><u>child with a disability may include, but is not limited to, the following:</u></p> <p><u>(a) Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than school districts (such as Head Start or community-based child-care);</u></p> <p><u>(b) Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children;</u></p> <p><u>(c) Locating classes for preschool children with disabilities in regular public elementary schools; and</u></p> <p><u>(d) Providing services and instruction in the home.</u></p> <p><u>(4) If a public agency determines that placement in a private preschool program is necessary for a child with a disability to receive FAPE, the public agency must make that program available at no cost to the parent.”</u></p>
<p>2. One commenter stated: “Preschool setting for deaf/hard of hearing children should be provided to include language access to instruction and services with peers in the child’s language/modality of communication in alignment with RCW 72.40.080, RCW 72.40.0191(8).”</p>	<p>No action taken. WAC 392-172A-03110(2)(a)(iv) currently directs IEP teams to consider the communication needs of eligible preschool students who are deaf/hard of hearing.</p>

I. WAC 392-172A-02076. Prohibited practices.

Comment Summary	Response
<p>1. One commenter suggested that OSPI include a method to verify which district practices fall into the category of prohibited practices so that school districts can proactively know which approaches are not allowed under this rule. The commenter stated that school districts make their own</p>	<p>No action taken. OSPI believes that any potential issues regarding compliance with this section can be resolved under the IDEA and Washington state special education dispute resolution mechanisms and through training and technical assistance provided to the field. This rule is specific to students with</p>

Comment Summary	Response
determinations which may not be supported by scientific evidence.	disabilities, and the commenter’s suggestion applies to all students.

J. WAC 392-172A-02080. Transition of children from the Part C program to preschool programs.

Comment Summary	Response
<p>1. One commenter asked: “We have a wondering...why would we use 15 days rather than the 25 days as we do with other evaluation determination timeline?”</p>	<p>The proposed changes to WAC 392-172A-02080 are intended to ensure consistency with the proposed changes to WAC 392-172A-03005. OSPI believes the proposed rule changes clarify existing child find obligations for school districts and help reduce the possibility of delays in determining whether a student will be evaluated for special education services.</p> <p>The reduction in days to respond to a referral is consistent with OSEP guidance that forbids delaying an evaluation due to Response to Intervention (RTI). OSEP Memo 11-07</p>

K. WAC 392-172A-02100. Home/Hospital instruction.

Comment Summary	Response
<p>1. One commenter suggested reducing the period of disability or illness requiring home or hospital instruction from four to three weeks and that the current rule causes confusion regarding the amount and nature of home/hospital instructional services outside of the IEP process.</p>	<p>No action taken. Reimbursement of home or hospital (H/H) instructional services is provided by OSPI based on the number of weeks the student is absent from school. H/H funding is paid based upon the projected monthly (i.e., four week) amounts reported to OSPI by the district, charter school, or tribal compact school on their F-203 (State Revenue Forecast). H/H funding is adjusted in July based upon the actual weeks of H/H services reported to OSPI on Form E-525. H/H is thus included in Chapter 392-172A WAC in order to distinguish funding for the provision of special education services from the reimbursement provided through basic education funds. OSPI believes the changes currently proposed to this rule make clear that students eligible for special education services who qualify for H/H instructional</p>

Comment Summary	Response
	services must continue to receive FAPE, as determined by the student’s IEP team, and that H/H instructional services are not to be used for the initial or ongoing delivery of special education services.
<p>2. One commenter stated that there is no basis in federal law for a doctor to predict an entire month of absence before offering temporary home or hospital services and recommended reducing the period of disability or illness requiring home or hospital instruction from four to three weeks because setbacks of three weeks can have a significant impact on student learning and progress.</p> <p>The commenter also stated that WAC 392-172A-02100 should only pertain to students who require a hospital stay but who are ineligible for special education services and should not be part of Chapter 392-172A WAC. The commenter believes that any provision of the WAC for hospital stays that do not involve special education services should be part of the rules pertaining to Section 504 or general education. Chapter 392-172A WAC should be limited to what school districts must do when an eligible student requires a hospital setting as part of their continuum of services.</p>	No action taken. See response to K-1 . OSPI can address confusion regarding H/H instructional services and the ongoing provision of special education services through guidance and technical assistance to the field.
<p>3. One commenter stated that H/H instructional services causes confusion because school districts often conflate administrative decisions for students who need temporary H/H instructional services with regulatory requirements for students on IEPs who need home/hospital-based instruction; adding that clarification will be important especially during the time of COVID-19 and the advent of remote learning.</p>	No action taken. See response to K-1 . OSPI can address confusion regarding H/H instructional services and the ongoing provision of special education services through guidance and technical assistance to the field.

L. WAC 392-172A-02105. Emergency response protocols.

Comment Summary	Response
<p>1. One commenter suggested that OSPI’s proposed changes to WAC 392-172A-02105 regarding trauma-informed crisis intervention (including de-escalation techniques) should also include a list or set an explicit standard that will ensure approaches have been vetted by persons or organizations qualified in trauma-informed practices. The commenter stated that poorly implemented approaches can cause harm or give a false sense of progress and not accomplish the intended goals of this subsection.</p>	<p>No action taken. OSPI’s proposed changes to WAC 392-172A-02105 seek to clarify the types of qualified providers required under this section. OSPI declines to impose additional training requirements or endorse specific persons or organizations, other than that training must be provided by a qualified provider. OSPI can address the intended goals of this section through guidance and technical assistance to the field.</p>
<p>2. One commenter suggested that non-public agencies (NPAs) must implement emergency response protocols, follow regulations regarding restraint and isolation, and must fulfill restraint/isolation documentation and reporting requirements.</p>	<p>OSPI’s proposed changes to WAC 392-172A-04085 regarding reporting requirements for NPAs are consistent with the commenter’s suggestion.</p>

M. WAC 392-172A-2110. Isolation and restraint – Conditions.

Comment Summary	Response
<p>1. One commenter suggested that OSPI’s proposed changes to WAC 392-172A-02110 regarding trauma-informed crisis intervention (including de-escalation techniques) should also include a list or set an explicit standard that will ensure approaches have been vetted by persons or organizations qualified in trauma-informed practices. The commenter stated that poorly implemented approaches can cause harm or give a false sense of progress and not accomplish the intended goals of this subsection.</p>	<p>No action taken. See response to L-1.</p>

N. WAC 392-172A-03005. Referral and timelines for initial evaluations.

Comment Summary	Response
<p>1. One commenter requested that the timeline for school districts to respond to a referral for special education services remain at 25 school</p>	<p>No action taken. OSPI believes that the proposed changes to WAC 392-172A-03005 clarifies what is a reasonable amount of time for a school district to make a decision about</p>

Comment Summary	Response
<p>days so that staff do not experience additional overload.</p>	<p>evaluating a student for special education services. This change is not a new requirement for school districts to conduct or complete an evaluation.</p> <p>The reduction in days to respond to a referral is consistent with OSEP guidance that forbids delaying an evaluation due to Response to Intervention (RTI). OSEP Memo 11-07</p>
<p>2. One commenter proposed revising OSPI's proposed changes to WAC 392-172A-03005(1)(c) to read:</p> <p><u>"The school district shall make a referral form available for requesting an initial evaluation and provide it upon receipt of an oral request."</u></p>	<p>Proposed rule amended for clarity as follows:</p> <p><u>"(c) Each school district must have a referral form for requesting an initial evaluation available to the general public and provide it upon receipt of an oral or written request in the requester's native language or with the support of a qualified interpreter when needed."</u></p>
<p>3. One commenter requested that OSPI allow parents to request initial evaluations either verbally or in writing and urges adoption of provisions similar to the Commonwealth of Pennsylvania with clarification that the written request forms must be made available in parents' native languages.</p>	<p>Proposed rule amended. See response to N-2.</p>
<p>4. One commenter requested that OSPI consider requiring completion of evaluations prior to summer breaks and shortening the timeline for school districts to decide whether or not to evaluate.</p>	<p>OSPI's proposed changes to WAC 392-172A-03005(2)(c) are consistent with the commenter's suggestion to clarify the timeline for a school district to make a decision about evaluating a student for special education services. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding completion of evaluations prior to summer breaks.</p>

O. WAC 392-172A-03015. Reevaluation timelines.

Comment Summary	Response
<p>1. One commenter proposed addressing school district delays in completing reevaluations by changing WAC 392-172A-03015 to read:</p> <p>“(1) A school district must ensure that a reevaluation of each student eligible for special education is <u>promptly initiated in accordance with subsection (4) of this section and completed in accordance with WAC 392-172A-03020 through 392-172A-03080, when:</u></p> <p>(A) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or</p> <p>(B) If the child's parent or teacher requests a reevaluation.</p> <p>(2) A reevaluation conducted under subsection (1) of this section:</p> <p>(a) May occur not more than once a year, unless the parent and the school district agree otherwise <u>and the reevaluation will not unreasonably delay a response to a placement or service proposal by a parent;</u> and</p> <p>(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.</p> <p>(3) Reevaluations shall be completed within:</p> <p>(a) Thirty-five school <u>calendar</u> days after the date written consent for an evaluation has been provided to the school district by the parent;</p> <p>(b) Thirty-five school <u>calendar</u> days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or</p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding reevaluations.</p>

Comment Summary	Response
<p>(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for the timeline.</p> <p>(4) A reevaluation is promptly initiated when the school district provides the parent with a written consent form as soon as possible, and not later than five days after receiving a reevaluation request or determining that a reevaluation is warranted."</p>	
<p>2. One commenter suggested addressing school district delays in completing reevaluations by adding a new subsection to WAC 392-172A-03015 that reads:</p> <p><u>"(4) Once a reevaluation decision is made, the school district will provide parents with a written consent form as soon as possible, and not later than five days after receiving a reevaluation request or determining that a reevaluation is warranted."</u></p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding reevaluations.</p>
<p>3. One commenter asked OSPI to adjust reevaluation and evaluation timelines to meet the needs of highly mobile students and avoid loss of educational opportunity due to a slow or delayed evaluation.</p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding reevaluations. OSPI can address the needs of highly mobile students through guidance and technical assistance to the field.</p>

P. WAC 392-172A-03035. Evaluation report.

Comment Summary	Response
<p>1. One commenter recommended changing WAC 392-172A-03035(1)(d) to read:</p> <p>"The recommended special education services, and any related services the IEP team determines the student needs to benefit from their special education services; ("their" now an acceptable term for singular.)"</p>	<p>Proposed changes to WAC 392-172A-03035(1) amended for clarity as follows:</p> <p><u>"(d) The recommended special education ((and related)) services ((needed by the student)), and any related services the evaluation group determines the student needs in order to benefit from special education services[...]."</u></p>

Q. WAC 392-172A-03090. Definition of individualized education program.

Comment Summary	Response
<p>1. One commenter expressed concern about the proposed addition of WAC 392-172A-03090(1)(k)(iii): "This is a huge shift from past commitment to awarding the same high school diploma to all students."</p>	<p>No action taken. OSPI's proposed rule change provides clarity in response to the language and requirements of the ESSA.</p>
<p>2. One commenter stated: "We appreciate the addition of subsection (k)(iii) to ensure consistency and increase utility of the transition planning process for students and families."</p>	<p>No action taken.</p>
<p>3. One commenter requested to "[a]void changing WAC 392-172A-03090(1)(d), which now requires the statement of services in an IEP to be "based upon peer-reviewed research to the extent practicable," to include "input from IEP team members" as an additional basis for IEP services."</p>	<p>No action taken. OSPI believes the proposed change to WAC 392-172A-03090(1)(d) is necessary to clarify existing regulations. The proposed change does not alter the existing language regarding the use of "peer-reviewed research to the extent practicable" and the proposed IEP team input under this section is not limited to the statement of services.</p>

R. WAC 392-172A-03100. Parent participation.

Comment Summary	Response
<p>1. One commenter stated that OSPI's proposal to add WAC 392-172A-03100(3)(c) is confusing: "Is what's being proposed that notification should be in writing for all parents? I think not, but maybe it should? Maybe borrow language from WACs 392-190-059, 392-190-060, 392-190-065 ("notice must be provided in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964" ...ADDING ...or arranging for an interpreter for parents with deafness."</p>	<p>OSPI's proposal to add WAC 392-172A-03100(3)(c) clarifies expectations so that school districts will be able to do whatever it can to ensure that parents understand the notification being provided under WAC 392-172A-03100(1). Parent notification under WAC 392-172A-03100(1) is not always required to be in writing, but may be necessary in certain circumstances, and may include other methods such as verbal communication or personal contact, with an interpreter present, if necessary. The proposed language is intended to be consistent with the existing requirement for school districts to "take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting" under WAC 392-172A-03100(7). The</p>

Comment Summary	Response
	<p>proposed language is also intended to provide consistency with ESHB 1130 adopted in 2019 and codified under RCW 28A.155.230.</p>
<p>2. One commenter proposed adding additional language to WAC 392-172A-03100(3) to require parental notification to "be written in a parent's native language when necessary for the parent's understanding."</p>	<p>OSPI's proposed changes to WAC 392-172A-03100(3) regarding parental notification are consistent with the commenter's suggestion.</p>
<p>3. Multiple comments were received requesting OSPI to require school districts to provide draft documents in advance of meetings translated into the parents' native language.</p> <p>One commenter specifically proposed adding the following new requirement to WAC 392-172A-03100(8):</p> <p><u>"The school district must give the parent a copy of the student's IEP at no cost to the parent. The school district shall give the parent a copy of any draft IEP, draft behavior plan or draft evaluation report at least 24 hours before the IEP team meeting at which the draft document will be discussed whenever it is reasonably possible to do so without delaying the meeting."</u></p> <p>The commenter explained: "Parents are routinely presented with multi-page documents to review, understand and comment on in a very short period of time while trying to listen to what school district participants are sharing with them in the IEP meeting. It requires a substantial amount of processing on the part of a parent to fully understand and suggest any changes to the documents that may determine eligibility, initial IEP consent, or changes to services or placement. This is especially difficult for parents whose primary language is not</p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding draft documents prior to meetings. OSPI can address best practices for parent participation in meetings through guidance and technical assistance to the field.</p>

Comment Summary	Response
<p>English. School teams often provide draft documents in advance of meetings as a courtesy. This practice improves parent understanding and makes meetings more productive, and should be required."</p>	
<p>4. One commenter stated that OSPI should "set a timeline for responses to parent requests for IEP team meetings." The commenter also suggests rule changes for "allowing the requests for meetings to be made verbally or in writing" and "to ensure continuity of services for highly mobile students [...] making clear that the requirement to respond and set a meeting is triggered by a request from a parent (which may include a kinship caregiver or foster parent), or a social worker."</p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding requests for IEP team meetings. OSPI can address best practices for responding to parent requests for meetings and meeting the needs of highly mobile students through guidance and technical assistance to the field.</p>
<p>5. One commenter stated: "All IEPs should be translated into the appropriate home language of families. Allowing a subjective standard of "when necessary for the parent's understanding" for when to provide translated documents will lead to varied interpretations across LEAs. A universal standard that supports families understanding what education a student will receive is needed to ensure a student's constitutional right of being able to access a basic education is upheld. All relevant WACs should be aligned with this practice to ensure appropriate language access for families."</p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements regarding the translation of documents. The proposed changes to WAC 392-172A-03100 are intended to create consistency with existing requirements for school districts to "take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting" under WAC 392-172A-03100(7). The proposed changes are also intended to provide consistency with ESHB 1130 adopted in 2019 and codified under RCW 28A.155.230.</p>
<p>6. One commenter suggested that if a qualified interpreter is not provided consistent with OSPI's proposed rule under WAC 392-172A-03100(7)(b), that the reason for an interpreter not being provided be documented and made available to families.</p>	<p>No action taken. OSPI cannot change the requirements for providing qualified interpreters under RCW 28A.155.230 through the rulemaking process; legislative action is required. OSPI believes, however, that any potential issues regarding compliance with this section can be resolved under the IDEA and Washington state special education dispute resolution mechanisms and through</p>

Comment Summary	Response
	training and technical assistance provided to the field.

S. WAC 392-172A-03105. When IEPs must be in effect.

Comment Summary	Response
<p>1. One commenter proposed changing WAC 392-172A-03105(3)(a) to state that:</p> <p>“The student's IEP is <u>timely</u> provided to and <u>reviewed by</u> each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation [...]”</p>	<p>OSPI’s proposed changes to WAC 392-172A-03105(3)(b) are consistent with the commenter’s suggestion to ensure that any district staff and service providers are informed of their responsibilities to the student in a timely manner. OSPI, however, declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new requirements upon school districts to verify that staff and service providers have personally reviewed a student’s IEP.</p>

T. WAC 392-172A-04085. Responsibility of the school district.

Comment Summary	Response
<p>1. Multiple commenters proposed changes to WAC 392-172A-04085(1) and (4) in order to ensure non-public agencies and other nonpublic placements comply with the requirements of RCW 28A.600.485 and report incidences of restraint and isolation to school districts and OSPI.</p>	<p>OSPI’s proposed changes to WAC 392-172A-04085(1) are consistent with all commenter suggestions. Nonpublic agencies and other nonpublic placements will be required to report incidences of restraint and isolation in compliance with RCW 28A.600.485 to school districts and OSPI under the proposed rule changes.</p>

U. WAC 392-172A-04090. Approval of nonpublic agencies.

Comment Summary	Response
<p>1. One commenter stated: “Nationally, Nonpublic Agencies (NPA) have subjected students to inappropriate use of restraint and isolation with some cases resulting in the death of a student. Washington state needs to have stricter requirements for NPAs. We recommend adding the requirement of training in trauma informed practices and restraint and isolation. This requirement should mirror the requirements of an LEA. We</p>	<p>OSPI believes the proposed changes to WAC 392-172A-04085(1) sufficiently address the commenter’s recommendation. OSPI believes that any potential issues regarding compliance with existing rules on the qualifications of staff and the quality of interventions provided can be resolved under the IDEA and Washington state special education dispute resolution mechanisms and through training and technical assistance</p>

Comment Summary	Response
<p>recommend that OSPI maintain a list of approved training methods and that NPAs must choose from an approved training method.”</p>	<p>provided to the field. Adding requirements that only apply to the provision of special education services has the potential to reinforce stereotypes about the permissibility and use of restraint and isolation as only for students with IEPs. OSPI, however, would consider supporting legislative action to potentially develop standards of practice and an approved list of training providers since RCW 28A.600.485 has applicability to general education.</p>

V. WAC 392-172A-4095. Application requirements for nonpublic agency approval.

Comment Summary	Response
<p>1. One commenter stated: “As a part of the renewal process, we recommend adding the requirement that each NPA must complete the isolation and restraint report that LEAs complete. They should report the number of instances of restraint, isolation, injury to student or staff and compliance to parental notification timelines. In addition, we recommend that NPAs must submit evidence of the trauma informed crisis training with each application and renewal application.”</p>	<p>OSPI’s proposed changes to WAC 392-172A-04085(1) are consistent with the commenter’s recommendations. See also responses to I-1 and U-1.</p>

W. WAC 392-172A-05001. Parent participation in meetings.

Comment Summary	Response
<p>1. One commenter proposed adding new sections to WAC 392-172A-05001 with the following explanation:</p> <p><u>“(4) Parents may request consent to electronically record IEP team meetings, and a school district shall not unreasonably withhold such consent. Any denial of consent for recording must be explained in a written notice pursuant to WAC 392-172A-05010.</u></p>	<p>OSPI’s proposed changes to WAC 392-172A-05001 clarifies expectations for observing proposed educational placements and recording meetings in a manner that sufficiently addresses the commenter’s recommendations without imposing new requirements upon school districts that could potentially contravene existing school district policies and state laws.</p>

Comment Summary	Response
<p><u>(5) A parent of a student may request permission to observe that student in his or her current educational placement and to observe, during school hours, an alternative educational placement that the parent is proposing or considering for that student. A school district shall not unreasonably deny a requested parent observation and shall make reasonable efforts to permit such observation prior to any placement decision pursuant to WAC 392-172A-02060. Any denial of a parent request for a school observation must be explained in a written notice pursuant to WAC 392-172A-05010.</u></p> <p>Explanation: Many parents want to record IEP meetings due to language difficulties, unavailability of one parent, or a general desire to avoid misunderstandings, but are unable to do so because of needless objections from school personnel. To ensure that parents are accurately informed about the IEP process, the regulations should prohibit unreasonable withholding of consent for audio-recording of IEP meetings. Also, many parents find it difficult to make informed decisions as IEP team members without an opportunity to observe their children in their current or proposed educational settings. The regulations should prohibit unreasonable denials of observation requests in order to promote informed participation by parents.”</p>	
<p>2. One commenter asked OSPI to require school districts to provide drafts of written materials in advance of meetings.</p>	<p>No action taken. See response to R-3.</p>
<p>3. One commenter asked OSPI to clarify the applicability of parent observation rights under RCW 28A.605.020 to special education settings.</p>	<p>OSPI believes proposed rule WAC 392-172A-05001(2)(e) regarding the ability of parent(s) to observe current and proposed educational placements is consistent with the commenter’s request.</p>

Comment Summary	Response
<p>4. One commenter proposed alternative language for OSPI’s proposed rule change under WAC 392-172A-05001(2)(e):</p> <p>“LEAs should not have the right to create policies that deny parents the opportunity to observe a placement. We need language that affirms access for parents:</p> <p><u>‘A parent of a student eligible for special education services may request permission to observe that student in a current or proposed placement. A school district shall respond to such request within five school days and shall not unreasonably withhold consent. Any denial of permission for an observation must be explained in a prior notice pursuant to WAC 392-172A-05010.’</u></p> <p>It is in the student’s and state’s interests that parents be given opportunity for informed and meaningful engagement. Without that ability for parents to observe an educational placement, an LEA can’t truly claim a parent has informed consent, a core tenant of a free and appropriate education. Our schools will not be equitable nor inclusive until all families are given equitable opportunity to understand and meaningfully participate in the process.”</p>	<p>OSPI believes proposed rule WAC 392-172A-05001(2)(e) sufficiently addresses the commenter’s proposal. OSPI, however, declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new timelines and requirements upon school districts specific to parent requests to observe current and proposed educational placements.</p>
<p>5. One commenter requested: “OSPI should provide guidance around what evidence a district needs to provide to deny interpreter services when interpretation services were a consideration to help ensure a family will understand the contents of a meeting. Additionally, OSPI should provide clear guidance on interpreter training requirements. OSPI should collect data on when interpreters are or are not provided and which home language a family speaks.”</p>	<p>No action taken. OSPI cannot change the requirements for providing qualified interpreters under RCW 28A.155.230 through the rulemaking process. OSPI declines to impose additional training requirements other than existing requirements for providing a qualified interpreter under RCW 28A.155.230. Any potential issues regarding interpreter qualifications and the potential impact upon parent participation can be resolved under the IDEA and Washington</p>

Comment Summary	Response
	state special education dispute resolution mechanisms and through training and technical assistance provided to the field. OSPI, however, believes the proposed changes under WAC 392-172A-03100 sufficiently address the commenter's suggestions regarding data collection on languages spoken in the home.
<p>6. One commenter proposed alternative language for OSPI's proposed rule change under WAC 392-172A-05001(5):</p> <p>"Leaving determination on the recording of IEP meetings up to the LEAs can create significant inconsistencies among across LEAs and create additional barriers for parents in understanding their child's IEP, especially when there are language access challenges. <u>'Parents may request consent to electronically record IEP team meetings, and a school district shall not unreasonably withhold such consent. Any denial of consent for recording must be explained in a prior notice pursuant to WAC 392-172A-05010.'</u> It is in the student's and state's interests that parents be given the opportunity for informed and meaningful engagement. Taping helps with language access, comprehension and understanding; it can mean parents who cannot be present at IEP meetings can also have meaningful access. This becomes an equity issue for parents who do not have as much job flexibility."</p>	OSPI believes proposed rule WAC 392-172A-05001(5) sufficiently address the commenter's proposal. OSPI, however, declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing new standards upon school districts specific to responding to parent requests to record meetings.

X. WAC 392-172A-05010. Prior notice and contents.

Comment Summary	Response
<p>1. One commenter proposed promoting informed parental participation in educational decisions by changing WAC 392-172A-05010(1)(b) to read:</p>	No action taken. See responses to W-1 , W-4 , and W-6 .

Comment Summary	Response
<p>“(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student, <u>or to allow the student’s parent to electronically record an IEP team meeting, or to allow the student’s parent to observe the student’s current or proposed educational placement.</u>”</p>	

Y. WAC 392-172A-05005. Independent educational evaluation.

Comment Summary	Response
<p>1. One commenter proposed changes to WAC 392-172A-05005(7):</p> <p>“(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. <u>The school district must pay for the independent evaluator to attend any meeting to review evaluation results when such attendance is requested by the parents.</u> (c) <u>An independent evaluator must be permitted to have private discussions with parents.</u></p> <p>Explanation: Independent educational evaluations (IEEs) are specifically intended to be independent from the school district; however, too often the contract between the evaluator and district wrongly suggests that the district is the client by requiring that results be given to the district before the parent, requiring that a district representative be invited to all meetings with the parent or other such conditions. The regulations should protect the independence of the parent’s chosen evaluator so that families of limited means are on an equal footing with those who can afford to pay their own private evaluators. Also, IEE funding should include</p>	<p>No action taken. OSPI believes that changes are not needed because WAC 392-172A-03095 currently allows parents and/or school districts to invite independent evaluators to attend IEP meetings. An independent evaluator is also not precluded from including the costs of attending an IEP meeting in the contract for completing an IEE. OSPI thus declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing additional requirements regarding IEEs and IEP meetings.</p> <p>The existing rule (WAC 392-172A-05005) currently prohibits school districts from placing conditions upon obtaining an independent educational evaluation at public expense. OSPI believes that any potential issues regarding access to the IEE report and/or communications between the independent evaluator, school district, and parents can be resolved under the IDEA and Washington state special education dispute resolution mechanisms as well as through training and technical assistance provided to the field.</p>

Comment Summary	Response
<p>bringing the independent evaluator to the review meeting to ensure that the results are properly understood.”</p>	
<p>2. One commenter requested: “Clarify Independent Educational Evaluation regulations so districts do not impose their restrictions to evaluation scope or timeline. Districts must not control whether information is shared with a parent prior to meetings to discuss findings.”</p>	<p>No action taken. OSPI believes that further clarification is not necessary because WAC 392-172A-05005 currently prohibits school districts from placing conditions upon obtaining an IEE at public expense. School districts also may not limit information shared with parents. Any potential issues regarding the scope, timeline, and access to the independent education evaluation report can be resolved under the IDEA and Washington state special education dispute resolution mechanisms and through training and technical assistance provided to the field.</p>

Z. WAC 392-172A-05060. Mediation purpose – Availability.

Comment Summary	Response
<p>1. One commenter proposed the following changes:</p> <p>“(2) Mediation <u>pursuant to subsection (4) of this section</u> is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process. <u>Mediation pursuant to subsection (6) of this section is mandatory when requested by a parent involved in a due process case.</u></p> <p>(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication <u>when requested</u> unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.</p>	<p>OSPI believes the proposed change to WAC 392-172A-05060(5) sufficiently includes the commenter’s suggestions regarding language access. OSPI, however, declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing additional requirements regarding mediation and/or settlement conferences.</p>

Comment Summary	Response
<p><u>(6) A parent involved in a due process case may choose to participate in a settlement conference mediated by an administrative law judge for OSPI other than the judge assigned to the case. When requested by a parent, the school district shall participate in good faith in such a settlement conference. A settlement conference under this subsection is governed by the Uniform Mediation Act, Chapter 7.07 RCW, and may not include an attorney of the school district unless the parent is accompanied by an attorney."</u></p>	

AA. WAC 392-172A-05085. Due process hearing request filing and response.

Comment Summary	Response
<p>1. One commenter proposed using clearer language under WAC 392-172A-05085(1)(b):</p> <p><u>"Due process hearing timelines will begin upon receipt of the complaint by both the respondent and by the office of administrative hearings, whichever date is later."</u></p>	<p>Proposed rule amended. OSPI's proposed changes to WAC 392-172A-05085(1)(b) now includes the commenter's proposed language:</p> <p><u>"Due process hearing timelines will begin upon receipt of the request by both the other party and the office of administrative hearings, whichever date is later."</u></p>
<p>2. One commenter stated a preference for the current wording ("receiving") WAC 392-172A-05085(5) because the commenter believes it is clearer to a non-lawyer than "served with."</p>	<p>No action taken. OSPI believes the proposed change to WAC 392-172A-05085(5) is necessary to clarify the distinction between simply being in possession of ("receiving") a hearing request and receiving (being "served with") a hearing request that satisfies the requirements of WAC 392-172A-05085(2).</p>

BB. WAC 392-172A-05090. Resolution process.

Comment Summary	Response
<p>1. One commenter proposed changes to WAC 392-172A-05090(1)(c)(ii):</p> <p><u>"(ii) The parent and the school district agree to use a the mediation process described in WAC 392-172A-05060. If both parties agree in writing to continue the mediation at the</u></p>	<p>No action taken. OSPI declines to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing additional requirements regarding mediation and/or settlement conferences.</p>

Comment Summary	Response
<p>end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process <u>held pursuant to WAC 392-172A-05060(4) or the parent withdraws from the mediation process held pursuant to WAC 392-172A-05060(6).</u> [See comment Z-1].</p> <p>Explanation: Parents usually prefer to settle due process cases rather than litigate. Increasingly, they have faced resistance to settlement from school districts. Going through the hearing process can delay needed services for students while causing increased costs, uncertainty and stress for parents and school districts alike. In recent years, the Office of Administrative Hearings has offered ALJ settlement conferences as an alternative to hearings. These settlement conferences, which typically last one day, are the most efficient and effective way to resolve disputes. However, they are voluntary for both parties. The regulations should require ALJ settlement conferences when requested by parents so as to save resources, promote cooperation and address the needs of students more quickly."</p>	

CC. WAC 392-172A-05105. Hearing decisions.

Comment Summary	Response
<p>1. One commenter proposed the following changes to WAC 392-172A-05105(1):</p> <p>"(1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds, <u>which means applying the relevant law to the facts as to each issue identified in the hearing request. Any prehearing order altering or clarifying the issues to be decided in a due</u></p>	<p>No action taken. OSPI declines at this time to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing additional requirements regarding how an administrative law judge (ALJ) issues a due process hearing decision and administers due process hearings.</p>

Comment Summary	Response
<p><u>process hearing requires written consent from the parent requesting the hearing.</u>"</p>	

DD.WAC 392-172A-05110. Timelines and convenience of hearings.

Comment Summary	Response
<p>1. One commenter proposed the following changes to WAC 392-172A-05110:</p> <p>“(2) Reconsideration of the decision under RCW 34.05.470 is not allowed under Part B of the act due to the timelines for issuing a final decision <u>A party may seek reconsideration of a final order under RCW 34.05.470 by filing a petition for reconsideration with the administrative law judge and serving it on the opposing party within 10 days of the mailing of the order. Any written notice under RCW 34.05.470(3)(b) must specify a date for action within 30 days of the filing of the petition.</u></p> <p>(4) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved. <u>An initial scheduling order must notify the parties of at least three consecutive weekdays when the due process hearing will be held. The number and timing of hearing dates may be adjusted at the request of either party in accordance with subsection (3) of this section.</u></p> <p>Explanation: Reconsideration by an ALJ is a faster, easier way to correct errors than an appeal to federal court. The current regulation inaccurately states that federal timelines for a final order preclude reconsideration under the Administrative Procedure Act. But reconsideration occurs <i>after</i> a final order and delays the deadline for appeal to federal court. There is no conflict with IDEA timelines. Thus, regulations should</p>	<p>No action taken. OSPI declines at this time to go beyond the stated intent of the CR-101, which is to clarify existing rules, by imposing additional requirements regarding reconsideration of a due process hearing decision.</p>

Comment Summary	Response
<p>offer this additional avenue for redress. In keeping with the Congressional policy to resolve due process disputes quickly, a 30-day deadline for a decision is specified. As it is, Washington routinely violates the 45-day timeline for final decisions because the Office of Administrative Hearings <i>always</i> sets aside only one day for each due process hearing regardless of the number or complexity of issues in the complaint. It is very rare when a due process hearing can be completed in one day. Accordingly, in almost every case, the parties must ask the administrative law judge to delay hearings until an appropriate number of hearing dates is available on the judge's and parties' schedules. Hearing delays are exacerbated by a shortage of judges and by the fact that most school and parent attorneys are juggling multiple due process cases. The routine practice of scheduling one-day hearings, when it nearly always results in delay, calls into question the state's eligibility for federal funding. To fix this chronic problem, the regulations should require initial scheduling orders to set aside at least three hearing dates which will allow the assigned judge to meet the 45-day timeline. Three days is typically the minimum number of days needed for both sides to present all of their evidence and arguments. Many hearings last longer (sometimes for weeks) and the regulation should allow adjustments as appropriate. The initial hearing dates should be on consecutive weekdays to avoid any disadvantage to the party presenting evidence first."</p>	

EE. WAC 392-172A-05125. Student’s status during proceedings.

Comment Summary	Response
<p>1. One commenter requested OSPI clarify the proposed rule change under WAC 392-172A-05125(1)(b): “Is the intent to communicate that it is allowable to meet, or is it that IEP teams must continue to meet at least annually...(but not make decisions about issues in dispute)??”</p>	<p>Proposed rule amended. The purpose of the proposed rule is to communicate to the field that it is allowable for an IEP team to continue to meet and to update and implement the student’s IEP, as appropriate and in accordance with the rules, during the pendency of any hearing. The proposed rule WAC 392-172A-05125(1)(b) is amended for clarity as follows:</p> <p><u>“(b) The student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required under this chapter, and updating and implementing the student's IEP, unless those changes are in dispute.”</u></p>
<p>2. One commenter proposed adding additional language to WAC 392-172A-05125(1): “(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. <u>Pendency of an administrative hearing or judicial proceeding shall not preclude implementation of updated IEP goals.</u> Explanation: This clarifies that stay-put rights only affect placement and do not prevent schools from implementing new goals that are needed to avoid stagnation and ensure progress. A child does not lose the right to appropriately ambitious IEP goals simply because his or her parents are exercising their due process rights.”</p>	<p>OSPI believes proposed rule WAC 392-172A-05125(1)(b) sufficiently addresses the commenter’s suggestions.</p>

FF. WAC 392-172A-07010. Monitoring.

Comment Summary	Response
<p>1. One commenter proposed using clearer language under WAC 392-172A-07010(2)(b):</p> <p>“(2)(b) Collection, review, and analysis of such ((quantifiable)) quantitative and qualitative data and ((indicators)) other information OSPI determines necessary to measure performance in the following areas.”</p>	<p>Proposed rule amended. OSPI’s proposed changes to WAC 392-172A-05085(1)(b) now includes the commenter’s proposed language:</p> <p><u>“(b) Collection, review, and analysis of such ((quantifiable)) quantitative and qualitative data and ((indicators as are needed)) other information as OSPI determines necessary to measure performance in the following areas:”</u></p>
<p>2. One commenter proposed an alternative to the proposed changes under WAC 392-172A-07010(3): “<u>Keep original language or ‘If noncompliance is determined systemic in nature, a systemic corrective will be ordered.’</u> (Why would you <u>not</u> insist upon fixing a systemic problem where one is found?)”</p>	<p>No action taken. The purpose for OSPI’s proposed change under WAC 392-172A-07010(3) is to clarify that OSPI determines on a case-by-case basis what form of corrective action is needed for identified noncompliance.</p>

GG. WAC 392-172A-07035. Child count.

Comment Summary	Response
<p>1. Multiple commenters noted a grammatical correction to WAC 392-172A-07035(4) is needed.</p>	<p>The proposed change to WAC 392-172A-07035(4) is amended for clarity as follows:</p> <p><u>“(4) If a ((special education)) student <u>eligible for special education services</u> has more than one disability, the student is reported as follows: [...]”</u></p>
<p>2. Multiple commenters recommended updated language in WAC 392-172A-07035 and throughout WAC Chapter 392-172A in reference to the deaf/hard of hearing and blind/low vision student and parent populations. Additional recommendations for updated references to the Washington Center for Deaf and Hard of Hearing Youth and Washington State School for the Blind.</p>	<p>Proposed rules amended. OSPI’s proposed rule changes now reflect updated references to deaf/hard of hearing and blind/low vision students and parents whenever applicable throughout Chapter 392-172A WAC. References to the Washington Center for Deaf and Hard of Hearing Youth and Washington State School for the Blind have also been updated. Any remaining updates that have been overlooked will be corrected following the public notice and comment period.</p>

HH. WAC 392-172A-07040. Significant disproportionality.

Comment Summary	Response
<p>1. One commenter recommended using clearer language under the proposed rule WAC 392-172A-07040(2)(b):</p> <p><u>“(2)(b) Require the school district to publicly report on any changes made to its policies, practices, and procedures described under (a) of this subsection;”</u></p>	<p>Proposed rule amended. OSPI’s proposed changes to WAC 392-172A-07040(2)(b) now includes the commenter’s proposed language:</p> <p><u>“(b) Require the school district to publicly report on any changes made to its policies, practices, and procedures described under (a) of this subsection;”</u></p>
<p>2. One commenter noted in reference to WAC 392-172A-07040(1): “Disproportionality data on participation in the transitional bilingual instructional program should be collected and examined by OSPI in a similar fashion as disproportionality data on race and ethnicity to better understand how students gaining English proficiency are supported through the system of special education and to better understand the disproportionality they experience. The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity and participation in the transitional bilingual instructional program is occurring in the state [...].”</p>	<p>No action taken. OSPI’s proposed rule changes are intended to amend Chapter 392-172A WAC, which governs the provision of special education, and is applicable only to students eligible for special education services. OSPI, however, currently uses data from the Transitional Bilingual Instructional Program (TBIP) as one of the data points that Washington Integrated System of Monitoring (WISM) examines when selecting districts for monitoring reviews. OSPI would support any further efforts to convene stakeholders from across all programs to examine significant disproportionality based on race/ethnicity.</p>

II. WAC 392-172A-07045. Suspension and expulsion rates for students eligible for special education.

Comment Summary	Response
<p>1. One commenter offered suggestions for improving data collection in reference to WAC 392-172A-07045(1): “This language framing of students eligible for special education services or non-disabled students leaves out students with disabilities who are ineligible for special education – including many students with mental health disorders. Data should include students with IEPs, students with 504 plans, and students without disabilities. In addition to disaggregating by</p>	<p>No action taken. OSPI’s proposed rule changes are intended to amend Chapter 392-172A WAC, which governs the provision of special education, and is applicable only to students eligible for special education services. OSPI would support any further efforts to convene stakeholders from across all programs to examine significant disaggregating data based on race/ethnicity and program participation rates.</p>

Comment Summary	Response
<p>race and ethnicity we need to disaggregate by participation in the transitional bilingual instructional program. As a state we need to better understand how students with an IEP or 504 plan who are also enrolled in the transitional bilingual instructional program are served by school discipline policies, but without reporting and tracking the data we will not be able to understand how these students are being served.”</p>	
<p>2. One commenter suggested in reference to WAC 392-172A-07045(3): “Functional behavior plans should be included in subsection 3. They are key to intervention strategies, and often do not meet the needs of students.”</p>	<p>No action taken. OSPI believes the current language under WAC 392-172A-07045(3) sufficiently encompasses the commenter’s suggestions because a school district’s obligation to implement an IEP is inclusive of any behavioral intervention plan that meets the requirements of WAC 392-172A-01031.</p>

OSPI continues to accept public comments on the proposed changes to the rules related to special education. [Please review this informational handout for more information about the proposed changes, public hearings, and public comment period.](#) All written comments must be received by January 20, 2021 and can be submitted by email to [Glenna Gallo email address](#) (please include “Rules” in email subject line), by mail to OSPI, Attn: Glenna Gallo, PO Box 47200, Olympia, WA 98504, and by fax at 360-586-0247.

For specific questions about the rules hearing process, please contact the OSPI Rules Coordinator, Kristin Murphy, at [Kristin Murphy email address](#).

For general questions or concerns about special education, please contact OSPI Special Education at [OSPI Special Education email address](#) or by phone at 360-725-6075 (TTY: 360-664-3631).

Sincerely,



Glenna Gallo, M.S., M.B.A.
 Assistant Superintendent
 Special Education

GG/bjm