

WSR 12-15-008
EXPEDITED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 9, 2012, 1:12 p.m.]

Title of Rule and Other Identifying Information: WAC 392-172A-01010 Applicability, 392-172A-02005 Exceptions to a student's right to FAPE, 392-172A-03000 Parental consent for initial evaluations, initial services, and reevaluations, 392-172A-03005 Referral and timelines for initial evaluations, 392-172A-03105 When IEPs must be in effect, 392-172A-03135 Aversive interventions—Individualized education program requirements, 392-172A-05115 Civil action, 392-172A-05140 Purpose, 392-172A-05145 Authority of school personnel, 392-172A-05150 Determination of setting, 392-172A-05155 Change of placement decisions and manifestation determination, 392-172A-05215 Amendment of records and hearing rights, 392-172A-05220 Hearing on a request to amend records, 392-172A-06000 Condition of assistance, 392-172A-06030 School-wide programs under Title 1 of the ESEA, and 392-172A-07055 State safety net fund for high need students.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dr. Douglas Gill, Office of Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504-7200, e-mail speed@k12.wa.us (please put "2012 Rulemaking" in the subject line), AND RECEIVED BY 5:00 p.m. on October 1, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is amending its rules to correct currently incorrect regulatory references, amend rules so they are consistent with the federal regulations, and correct typographical errors.

Reasons Supporting Proposal: In reviewing our rules, OSPI has discovered typographical errors and the need for changes to the rules that are technical in nature. These rules need to be accurate and provide correct information to all of its users including OSPI staff, school districts, parents, attorneys, and the public in general.

OSPI is using expedited rule making for these amendments because it is adopting without material change a federal regulation, as allowed by RCW 34.05.353 (1)(b), and it is correcting typographical errors and clarifying language of rules without changing their effect, as allowed by RCW 34.05.353 (1)(c).

Statutory Authority for Adoption: RCW 28A.155.090.

Statute Being Implemented: Chapter 28A.155 RCW.

Rule is necessary because of federal law, 20 U.S.C. §§ 1400 et. seq.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela McPartland, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075; Implementation and Enforcement: Dr. Douglas Gill, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075.

July 9, 2012

Randy Dorn

Superintendent of
Public Instruction

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

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of students eligible for special education, including:

(i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, state schools for the deaf and blind established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapters 28A.193 and 28A.194 RCW; and

(b) Are binding on each public agency in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district or public agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are:

(a) Referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110; or

(b) Placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

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

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapters 28A.193 and 28A.194 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapters 28A.193 and 28A.194 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

- (i) Were not actually identified as being a student eligible for special education; and
- (ii) Did not have an IEP; unless the student:
 - (A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or
 - (B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special

education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC (~~(392-172A-05015)~~) 392-172A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedures to override the refusal to provide consent or mediation to obtain an agreement from the parent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of

that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

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

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1) A parent of a child, a school district, a public agency, other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the referral and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the referral, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the ~~((refusal))~~ consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by due process procedures; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

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

(1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP is held within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW ((~~28A.225.335~~) 28A.225.330) and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the ((~~individualized education program~~) aversive intervention plan) shall:

(a) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation at least every three months when school is in session.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, and the length of time of use.

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

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through ((~~392-172A-05155~~) 392-172A-

05175) is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district serving special education students shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or (7) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-05145 (3), (4)((~~e~~)) (f) and (7).

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

WAC 392-172A-05155 Change of placement because of disciplinary removals. (1) For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

((~~1~~)) (a) The removal is for more than ten consecutive school days; or

((~~2~~)) (b) The student has been subjected to a series of removals that constitute a pattern:

((~~a~~)) (i) Because the series of removals total more than ten school days in a school year;

~~((b))~~ (ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

~~((c))~~ (iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

~~((d))~~ (2) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

~~((e))~~ (3) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-0600 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 ~~((CFR))~~ C.F.R. 300.201 through 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students~~((:))~~, including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Placement of students in private school programs to provide FAPE or placement of students in private school programs enrolled by their parents when FAPE is at issue:

(k) Use of funds;

~~((l))~~ (l) Personnel preparation;

~~((m))~~ (m) Availability of documents relating to the eligibility of the school district;

~~((n))~~ (n) Provision to OSPI of all necessary information and data for the state's performance goals;

~~((o))~~ (o) Provision of instructional materials to blind persons or persons with print disabilities;

~~((p))~~ (p) Timely correction of noncompliance; and

~~((q))~~ (q) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the local district designee responsible for child identification activities and confidentiality of information.

(3) Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.

(4) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(5) A description of the use of funds received under Part B of the act.

(6) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, citizen complaints, or determinations status.

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

WAC 392-172A-06030 School-wide programs under Title 1 of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC ~~((392-172A-05010 (1)(a)))~~ 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting WAC ~~((392-172A-05010))~~ 392-172A-06010 (1)(b) and (c).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC ~~((392-14-600 through 392-14-685))~~ 392-140-600 through 392-140-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse high need, low incidence, catastrophic, or extraordinary aid for applicants with eligible high need spe-

cial education students whose cost is at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

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

WAC 392-172A-05115 Civil action. (1) Any party aggrieved by the findings and decision made under WAC 392-172A-05105 through 392-172A-05110 or (~~392-172A-05165~~) **392-172A-05160** has the right to bring a civil action with respect to the due process hearing request. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(2) The party bringing the action shall have ninety days from the date of the decision of the administrative law judge to file a civil action in federal or state court.

(3) In any action brought under subsection (1) of this section, the court:

(a) Receives the records of the administrative proceedings;

(b) Hears additional evidence at the request of a party; and

(c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(4) The district courts of the United States have jurisdiction of actions brought under section 615 of the act without regard to the amount in controversy.

(5) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the act, the due process procedures under WAC 392-172A-05085 and 392-172A-05165 must be exhausted to the same extent as would be required had the action been brought under section 615 of the act.

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

WAC 392-172A-05215 Amendment of records and hearing rights. (1) A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information.

(2) The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures.

(4) The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the (~~agency~~) **school district** shall amend the information accordingly and so inform the parent in writing.

(6) If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the (~~agency~~) **school district** shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC 392-172A-05215 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 C.F.R. 99.22 that include at least the following elements:

- (1) The hearing shall be held within a reasonable period of time after the school district has received the request;
- (2) The parent shall be given notice of the date, place, and time reasonably in advance of the hearing;
- (3) The hearing may be conducted by any party, including an official of the school district, who does not have a direct interest in the outcome of the hearing;
- (4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;
- (5) The school district shall provide a written decision to the parent within a reasonable period of time after the conclusion of the hearing; and
- (6) The decision of the ((agency)) school district shall:
 - (a) Be based solely upon the evidence presented at the hearing; and
 - (b) Include a summary of the evidence and the reasons for the decision.

**WSR 12-15-082
EXPEDITED RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-19—Filed July 18, 2012,
11:06 a.m.]

Title of Rule and Other Identifying Information: Default benchmark plan for essential health benefits.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Meg Jones, Office of the Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0255 [98504-0258], AND RECEIVED BY September 18, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule designates the default benchmark plan for Washington state pursuant to section 13, chapter 87, Laws of 2012 (E2SHB 2319). The proposed rule does not change any existing rules.

The commissioner anticipates that the designated default benchmark plan will establish services included as essential health benefits in all not grandfathered individual and small group plans that are offered, issued, renewed or amended on or after January 1, 2014, pursuant to section 1302 of the Affordable Care Act (P.L. 111-148, 2010, as amended). Because the default benchmark plan does not include all required essential health benefits categories or services under those categories, the commissioner anticipates that designation of supplemental benefits and additional scope and limitation requirements to implement the essential health benefits requirements may be required, and has initiated rule making under the agency matter number R 2012-18 (WSR 12-12-064).

Reasons Supporting Proposal: In 2012, the state legislature directed the commissioner to designate the benchmark plan consistent with the Affordable Care Act requirements. This expedited rule proposes to do so within the time frame in the Center for Medicare and Medicaid Services, December 16, 2011, Bulletin on the Essential Health Benefits. The commissioner identified the small group plan with the largest enrollment based on information requested and received from carriers, on plan enrollment information filed with the agency by carriers, and the July 3, 2012, CCIIO publication of state small group plan enrollment.

Statutory Authority for Adoption: RCW 48.02.060, chapter 87, Laws of 2012.

Statute Being Implemented: Chapter 87, Laws of 2012.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7170; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

July 18, 2012

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-43-865 Essential health benefits package benchmark reference plan A not grandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2014, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence Blue Cross Blue Shield as the *Innova* small group plan policy form, Policy Form number WW0711CCONMS, and certificate form number WW0112BINNS, offered during the first quarter of 2012. The SERFF filing number is RGWA-127372701.

(2) The services and items covered by a health benefit plan that are within the categories identified in Section 1302(b) of PPACA, including, but not limited to, ambulatory patient services, emergency services, hospitalization, mater-

nity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care, and as supplemented by the commissioner or required by the secretary of the U.S. department of health and human services.

(3) Mandated benefits pursuant to title 48 RCW enacted before December 31, 2011.

WSR 12-15-085
EXPEDITED RULES

OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-20—Filed July 18, 2012,
11:17 a.m.]

Title of Rule and Other Identifying Information: WAC 284-17-265 Sales of annuities—Insurance producer training.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kacy Scott, Office of the Insurance Commissioner, P.O. Box 48258 [40258], Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, AND RECEIVED BY September 18, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to make a correction in WAC 284-17-265 (4)(b).

Reasons Supporting Proposal: This rule is being proposed through the expedited process in accordance with RCW 34.05.353 (1)(c) because the amendment clarifies a rule without changing its effect.

Statutory Authority for Adoption: RCW 48.02.060, 48.23.015(8).

Statute Being Implemented: RCW 48.23.015.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

July 18, 2012
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2011-23, filed 2/28/12, effective 3/30/12)

WAC 284-17-265 Sales of annuities—Insurance producer training. (1) A person may not sell, solicit, or negotiate the sale of an annuity product unless he or she is appropriately licensed as an insurance producer and has successfully completed the annuity suitability training that meets the requirements of this section.

(2)(a) After March 29, 2012, prior to selling, soliciting, or negotiating the sale of annuity products, all insurance producers must complete a one-time, four-hour training course approved by the commissioner and provided by an insurance education provider approved in this state.

(b) Insurance producers who hold a life insurance line of authority on March 29, 2012, and who desire to sell annuities must complete the requirements of this section by September 29, 2012.

(c) Persons who obtain a life insurance line of authority on or after March 29, 2012, may not sell, solicit, or negotiate the sale of an annuity product until the annuity training course has been completed.

(3)(a) The annuity suitability training required under this section shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices, replacement, and disclosure requirements.

(b) The training required in this section must be sufficient to qualify for at least four continuing education credits.

(c) The training required in this section may be completed by either classroom instruction or self-study in accordance with WAC 284-17-220 through 284-17-256.

(d) The insurance producer education required by this section must not include training that is issuer or company product specific or includes any sales or marketing information and materials.

(e) Approved providers offering the annuity education required by this section must administer the course, issue certificates of completion, report completed training to the commissioner, and maintain records as required by WAC 284-17-270 through 284-17-310.

(4)(a) Resident insurance producers that complete the required training of this section and which are approved in this state may count those credits toward fulfillment of their Washington CE requirement.

(b) A resident or nonresident producer completing the required training of this section in another state which has adopted the annuity suitability requirement shall be deemed as satisfying this state's requirement ((as required by WAC 284-17-224)).

(c) If a resident insurance producer wishes to apply course credits for the required annuity suitability training offered in another state and the course is not otherwise approved for continuing education credit in this state, the

training may qualify for individual course credit subject to WAC 284-17-244.

(5) Each insurer must verify that an insurance producer has completed the annuity training course required in this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

(6) Insurance producers who have completed the annuity suitability training requirements of this section in a state other than Washington which has adopted the annuity suitability requirement prior to March 29, 2012, are deemed to have satisfied the training requirements of this section.