

Summary of Key WAC Updates: Early Childhood Special Education

Introduction

The purpose of this document is to clarify the obligations of districts to support children ages 3–5 years eligible for IDEA, Part B. OSPI and community partners have worked together to clarify current WACs and the definition of a regular early childhood program. Please note that updated and new Washington Administrative Codes (WACs) will be designated by either **bold** print or underlines within each section of this document.

Washington Administrative Code (WAC)	WAC Title	Existing, New, or Updated
<u>WAC 392-172A-02000</u>	Students' rights to a free appropriate public education	Existing
<u>§ 300.101</u>	Free appropriate public education (FAPE)	Existing
<u>WAC 392-172A-01152</u>	Regular early childhood program	New
<u>WAC 392-172A-02050</u>	Least restrictive environment	Updated
<u>WAC 392-172A-02055</u>	Continuum of alternative placements	Updated
<u>WAC 392-172A-03005</u>	Referral and timelines for initial evaluations	Updated
<u>WAC 392-172A-02080</u>	Transition of children from the Part C program to preschool programs	Updated



Existing IDEA, Part B, federal and state statute that is specific to ECSE:

Under WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE) (1) Each school district and residential or day schools operated under chapters 28A.190 and 72.40 RCW shall **provide every student who is eligible for special education between the age of three and twenty-one years**, a free appropriate public education program (FAPE)... The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

New: WAC 392-172A-01152 Regular early childhood program

Regular early childhood program means a program that includes at least fifty percent nondisabled children (i.e., children who do not have an individualized education program (IEP)). Programs may include, but are not limited to, the following: Head Start; early childhood education and assistance program (ECEAP); kindergarten; transitional kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or childcare.

WAC 392-172A-02050 Least restrictive environment

Previous WAC language specific to ECSE:

...school districts shall ensure that the provision of services to each student eligible for special education, *including preschool students*, and students in public or private institutions or other care facilities, shall be provided:

- (1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and
- (2) Special classes, separate schooling, or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2021 Updates specific to ECSE:

- (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.**



(4) For children ages three to five, **a general education environment is a regular early childhood program.**

WAC 392-172A-02055 Continuum of alternative placements

Previous WAC language specific to ECSE:

(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.

(2) The continuum required in this section must:

- (a) Include the alternative placements listed in the definition of special education 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
- (b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

2021 Updates specific to ECSE:

(3) **The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following:**

- (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);
- (b) Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children;
- (c) Locating classes for preschool children with disabilities in regular public elementary schools; and
- (d) Providing services and instruction in the "home".

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

Previous WAC language specific to ECSE:

(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 consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing: 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.

2021 Updates specific to ECSE:

(1)(c) Each school district must have an optional referral form for requesting an initial evaluation available to the general public and provide it upon receipt of any referral request in the requestor's native language or with the support of a qualified interpreter when needed.

(2)(d) Exception: Referral requests received through IDEA Part C notification of toddlers potentially eligible for Part B special education preschool services are subject to the timelines described under WAC 392-172A-02080 and not the timeline described in (c) of this subsection.

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

2021 Updates specific to ECSE:

(2)(b) Within twenty-five school days following the transition planning conference, a determination whether or not to evaluate the student for Part B will be made. The district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010U.

For more information, visit the [OSPI Early Childhood Special Education webpage](#), or contact Ryan Guzman, Early Childhood Special Education Coordinator at ryan.guzman@k12.wa.us.

Resources:

[Decision Tree/Flow Chart](#)

[LRE Verification Calculator](#)

[CEDARS Manual](#)

[LRE Trend Data by LEA](#)

[Rules for the Provisions of Special Education](#)

