February 27, 2020

Assistant Superintendent Glenna Gallo
Washington Office of the Superintendent of Public Instruction
Sent via email to: glenna.gallo@k12.wa.us

Re: Preproposal Statement of Inquiry, WSR 20-03-151 (Special Education Rulemaking)

Dear Ms. Gallo,

Thank you for considering proposals from the community for improving Washington's special education rules. As advocates for students with disabilities, the undersigned organizations (collectively "The Advocates") share an interest in clarifying rules to ensure that every eligible student receives the free and appropriate public education intended by Congress.

Too often, our existing rules are misunderstood or misapplied to the detriment of students. The Advocates are asking OSPI to include, in its forthcoming rule proposal, the changes outlined below. These changes come from the front lines of family struggles to obtain effective individualized services and meaningful parent participation. They address systemic problems with implementation of the *Individuals With Disabilities in Education Act* (IDEA) in Washington. Most of all, the proposed changes are designed to give a voice to the most important stakeholders in special education rulemaking – the 143,000 students whose success in life depends on realizing the promises of the IDEA. Your consideration is appreciated.

**The Arc of King County**
Stacy Dym, Executive Director

**Washington Autism Alliance & Advocacy**
Arzu Forough, Executive Director

**Attorneys for Education Rights**
Charlotte Cassady, Board President

**The Arc of Spokane**
Sima Thorpe, Executive Director

**Disability Rights of Washington**
Mark Stroh, Executive Director

**The Arc of Washington**
Sue Elliott, Executive Director

**The Arc of Tri-Cities**
Cindy O'Neill, Executive Director

**The Arc of the Peninsulas**
Chris Tibbs, Executive Director

**The Arc of Snohomish**
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**The Arc of Grays Harbor**
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**Northwest Justice Project**
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**The Arc of Whatcom**
Bev Porter, Executive Director

**Open Doors for Multicultural Families**
Ginger Kwan, Executive Director

**Roots of Inclusion**
Board of Directors

**WAC 392-172A-01035 Child with a disability or student eligible for special education**. Proposed changes to subsection (2)(d)(i):

(2) The terms used in subsection (1)(a) of this section are defined as follows:

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(d)(i) Developmental delay means a student three through ~~eight~~ nine who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas~~.~~,

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.

Explanation: For years, school districts have asserted that eligible students cannot receive specially designed instruction or related services in an area of disability such as fine motor or adaptive skills unless they score two deviations below the mean on a standardized test in that area. For example, school districts will deny an interpreter to a child who is eligible for special education in the deafness category, or deny speech therapy to a child who is eligible in the autism category, simply because a below-average score on a language test was not quite two deviations below the norm. This is wrong. Scoring two deviations below the norm in one developmental area is simply one of several ways for children ages three through eight to qualify for special education and related services in the "developmental delay" category. *See* WAC 392-172A-01035(2)(d)(i)(A). Once a child qualifies in *any* category, that child is entitled to receive whatever specially designed instruction and related services are appropriate, as determined by the Individualized Education Plan (IEP) team. In other words, eligibility and education planning are two different things. There is no numerical threshold for deficits to be addressed in an IEP.

The age limit is changed from eight to nine years old to comport with 34 CFR 300.8.

**WAC 392-172A-02100 Home/hospital instruction.**
Proposed changes:

Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of three ~~four~~ weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least three~~four~~ weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall receive only those home/hospital services that are necessary to provide temporary intervention as a result of a physical disability or illness. ~~be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds~~. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's individualized education program. ~~Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.~~

A student eligible for special education who qualifies for home/hospital instruction must 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. The IEP team determines the appropriate services.

Explanation: Under federal law, home and hospital instruction is part of the required continuum of placements for special education students. See 34 CFR 300.115(b)(1). Yet Washington school districts routinely treat it as an administrative matter, making decisions about the amount and nature of home-hospital instruction outside of the IEP process. Confusion may stem from the regulation's self-contradictory language, requiring "services that provide a FAPE" yet limiting services to what's "necessary" due to a temporary illness or disability. As it is, districts typically provide the same minimal amount of home instruction (i.e. two hours a week) to all qualifying students regardless of their individual needs. Districts need to understand that an IDEA-eligible student does not lose the right to a free and appropriate public education simply because of hospitalization, recovery from surgery or other temporary condition precluding attendance at school. The State should clarify that minimum services (addressing only the temporary impairment and not IEP goals) are only for those home-hospital students who are not eligible for special education. Additionally, the period of disability or illness requiring home or hospital instruction should be shorter. A three-week absence is just as likely to cause major setbacks as a four-week absence. There is no basis in federal law for a doctor to predict an entire month of absence before temporary home or hospital services will be offered.

**WAC 392-172A-03015 Reevaluation timelines.**
Proposed changes:

(1) A school district must ensure that a reevaluation of each student eligible for special education is promptly initiated in accordance with subsection (4) of this section and completed in accordance with WAC 392-172A-03020 through 392-172A-03080, when:
(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
(b) If the child's parent or teacher requests a reevaluation.
(2) A reevaluation conducted under subsection (1) of this section:
(a) May occur not more than once a year, unless the parent and the school district agree otherwise and the reevaluation will not unreasonably delay a response to a placement or service proposal by a parent; and
(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.
(3) Reevaluations shall be completed within:
(a) Thirty-five ~~school~~ calendar days after the date written consent for an evaluation has been provided to the school district by the parent;
(b) Thirty-five ~~school~~ calendar days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; 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 the timeline.
[NEW SUBSECTION] (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.

Explanation: School districts often use reevaluations as a stall tactic to avoid responding to parent proposals or to create some justification for denying such proposals. This is unfair to the student when there is already a valid reevaluation to guide decisions. The harm is exacerbated when districts fail to provide the necessary consent form to start the 35-day clock. Such tactics thwart the Congressional intent to promptly address parent concerns so that students will not lose educational opportunities. Washington's regulation should be modified to carry out the Congressional intent and avoid unnecessary delay in understanding and addressing student needs.

**WAC 392-172A-03100 Parent participation.**
Proposed changes to subsections (3) and (8):

A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; ~~and~~

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA~~.~~; and

(c) Be written in a parent's native language when necessary for the parent's understanding.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) 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.

Explanation: 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 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.

**WAC 392-172A-03105 When IEPs must be in effect.**
Proposed changes to subsection (3):

Each school district must ensure that:
(a) The student's IEP is timely provided to and reviewed by 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.

Explanation: This ensures that all staff members understand their responsibilities before they start serving students with disabilities.

**WAC 392-172A-04085 Responsibility of the school district.**
Proposed changes to subsections (1) and (4):

(1) A school district that places a student eligible for special education with a nonpublic agency or with another private or public agency under WAC 392-172A-04080(2) for special education and related services shall develop a written contract or interdistrict agreement which will include, but not be limited to, the following elements:

(a) The names of the parties involved;
(b) The name(s) of the student(s);
(c) The location(s) and setting(s) of the services to be provided;
(d) A description of services provided, program administration and supervision;
(e) The charges and reimbursement including billing and payment procedures;
(f) The total contract cost;
(g) The obligation to comply with all requirements of RCW 28A.600.485 and WAC 392-172A-02105 through WAC 392-172A-02110 including restrictions on restraint and isolation of students and requirements for parental notification and reporting;
~~(g)~~(h) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

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(4) The school district remains responsible for evaluations and IEP meetings for the student and for ensuring compliance with RCW 28A.600.485. If the school district requests that the nonpublic agency conduct evaluations or IEP meetings, the school district will ensure that all applicable requirements of Part B of the act are met.

Explanation: The current regulation does not address widespread non-compliance with RCW 28A.600.485 when it comes to tracking physical restraint and isolation by nonpublic agencies. It is believed that nonpublic agencies (particularly “therapeutic” schools) are using restraint and isolation as a behavior intervention strategy. Yet most school districts evade accountability for what happens to students sent to private schools at public expense, as if restraint and isolation only matters if it happens in a public school. To protect vulnerable students, compliance with RCW 28A.600.485 should be added to the regulations for nonpublic placements.

**WAC 392-172A-05001 Parent participation in meetings.**
Proposed new subsections:

(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.
(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.

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.

**WAC 392-172A-05010 Prior notice and contents**.
Proposed changes:

(1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:
(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or
(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student, 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.
(2) The notice required under this section must include:
(a) A description of the action proposed or refused by the agency;
(b) An explanation of why the agency proposes or refuses to take the action;
(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
(d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;
(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
(g) A description of other factors that are relevant to the agency's proposal or refusal.
(3)(a) The notice required under subsections (1) and (2) of this section must be:
(i) Written in language understandable to the general public; and
(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
(ii) That the parent understands the content of the notice; and
(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

Explanation: See above. This change promotes informed parental participation in educational decisions.

**WAC 392-172A-05005: Independent educational evaluation.**
Proposed changes to subsection (7):

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
(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. 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.
(c) An independent evaluator must be permitted to have private discussions with parents.

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 bringing the independent evaluator to the review meeting to ensure that the results are properly understood.

**WAC 392-172A-05060 Mediation purpose—Availability**.
**WAC 392-172A-05090 Resolution process**.

Proposed changes to sections 05060:

(1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation pursuant to subsection (4) of this section is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process. Mediation pursuant to subsection (6) of this section is mandatory when requested by a parent involved in a due process case.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication when requested ~~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.

(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.

Proposed changes to sections 05060:

(1)(a) Within fifteen days of receiving notice that a parent has filed a due process hearing request with the district and provided a copy of the due process request to the OSPI administrative resources section, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use a ~~the~~ mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the parent's filing of the due process hearing request under WAC 392-172A-05085, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-03100(6), the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting within fifteen days as specified in subsection (1) of this section or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process held pursuant to WAC 392-172A-05060(4) or the parent withdraws from the mediation process held pursuant to WAC 392-172A-05060(6).

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

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.

**392-172A-05105 Hearing decisions**.
Proposed changes to subsection (1):

(1) An administrative law judge's determination of whether a student received FAPE must be based on substantive grounds, 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 process hearing requires written consent from the parent requesting the hearing.
(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:
(a) Impeded the student's right to a FAPE;
(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
(c) Caused a deprivation of educational benefit.

Explanation: According to the 2017 and 2018 due process hearing decisions publicly posted by OSPI, parents won only 30 percent of the time in Washington, which is significantly lower than historical national averages. It is widely believed that parents are disadvantaged by a routine practice among Washington's administrative law judges to reframe issues for hearing in narrower (easier to defeat) terms. This common practice of restating parents' issues was criticized by the Ninth Circuit U.S. Court of Appeals in *M.C. v. Antelope Valley Union High School District*, 858 F.3d 1189 (2017) ("A party bringing a due process complaint is entitled to frame the issues it wishes to present and should not be put in the difficult position of contradicting the presiding official who will soon be the trier of fact"). Narrowing broadly stated issues to be hyper-specific favors school districts and is not authorized by any federal or state statute. The regulations should abolish the practice and require parent consent for any judicial rewriting of parent issues in order to ensure fair proceedings.

**WAC 392-172A-05110 Timelines and convenience of hearings**.
Proposed changes:

(1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(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~~ 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.

(3) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

(4) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved. 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.

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 *after* a final order and delays the deadline for appeal to federal court. There is no conflict with IDEA timelines. Thus, regulations should 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 *always* 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.

**WAC 392-172A-05125 Student's status during proceedings.**
Proposed changes to (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. Pendency of an administrative hearing or judicial proceeding shall not preclude implementation of updated IEP goals.

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.