

# New Student Discipline Rules Questions & Answers

## A Technical Guide

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### A. OSPI Student Discipline Rule Making

#### A1. Why does the Office of Superintendent of Public Instruction (OSPI) write rules related to discipline?

The Office of Superintendent of Public Instruction (OSPI) has the responsibility and statutory authority from the Washington State Legislature to write and adopt rules on a variety of subjects, including student discipline. Washington's discipline rules were first adopted over four decades ago. OSPI has broad statutory authority to adopt rules prescribing the substantive and procedural due process guarantees of students—including discretionary decision-making authority to develop due process procedures that adequately protect the interest of students. The statutes authorizing OSPI to adopt discipline rules are RCW [28A.600.015](#); RCW [28A.600.020](#).

#### A2. What is OSPI's process for adopting new discipline rules?

OSPI's process for adopting rules is governed by Washington's Administrative Procedure Act (APA), [Chapter 34.05 RCW](#). When OSPI needs to update rules quickly in response to new legislation, the agency can use the emergency rule or expedited rulemaking processes in the APA. For example, after the Legislature passed [House Bill 1541](#) in March 2016, OSPI used an expedited process to ensure the rules for student discipline aligned with new legislation by the start of the 2016–17 school year.

For all other rules, OSPI begins with a formal announcement that the agency is considering developing a new rule, amending an existing rule, or repealing an entire rule or sections of a rule. Next, OSPI publishes proposed rules along with information about how the public can provide comments. After considering all public comments, the agency may either (1) adopt the proposed rules with minimal changes or (2) substantively revise the proposed rules. If OSPI makes substantial revisions to the initially proposed rules, the agency is required to publish the revised proposed rules and solicit additional public comment. When the agency adopts final rules, the rules typically become effective 31 days after filing, unless specified otherwise.

OSPI initiated the formal rule making process related to the new student discipline rules on November 1, 2016. Following a period of extensive study and stakeholder engagement, which included a reconvening of the [Student Discipline Task Force](#) between October 2016 and January 2017, OSPI filed proposed rules on September 6, 2017. After three public comment periods, including eight public hearings held around the state, OSPI adopted the final student discipline rules on July 30, 2018.

For more information on the new discipline rules effective dates, refer to Appendix A.

For more information on OSPI rule making, see [Rules Process Frequently Asked Questions](#).

#### A3. Where can someone find Washington's discipline rules?

The Washington Administrative Code (WAC) contains all rules that have been adopted in Washington. OSPI rules are found under Title 392 WAC and the student discipline rules are under [Chapter 392-400 WAC](#).

OSPI's [Student Discipline](#) webpage includes a link to the discipline rules under Chapter 392-400 WAC, as well as links to other laws and additional information.

#### A4. Why did OSPI decide to adopt new discipline rules?

OSPI decided the state's student discipline rules under Chapter 392-400 WAC needed a comprehensive rewrite for several reasons. The agency adopted the new discipline rules to:

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- Simplify and clarify due process procedures for school districts, students, and families;
- Improve clarity and readability of the entire chapter, thereby eliminating problems of interpretation and problems of practice that are a result of confusing or vague terminology;
- Encourage fewer adversarial resolutions to discipline-related issues and the use of best practices to minimize the use of exclusionary discipline practices;
- Increase opportunities for students, family, and community engagement in discipline, including in the development of discipline policies and in resolving discipline-related issues; and
- Provide further guidance on the requirements passed by the legislature in 2016 in HB 1541, including specific guidance on the provision of educational services while a student is suspended or expelled.

### A5. Will OSPI revise the discipline rules again?

OSPI will update Chapter 392-400 WAC before the start of the 2019–20 school year to make further housekeeping and technical revisions to the rules. The agency will also update the discipline rules in response to any legislative enactments that necessitate a change to the rules.

## B. Student Discipline Rules General Questions

### B1. Do the new discipline rules apply to all K–12 students in Washington’s public schools?

Yes. Washington law requires every school board to adopt school district discipline policies and procedures that are consistent with OSPI rules for student discipline. See RCW [28A.600.010](#).

### B2. Are there other laws that apply to how school districts administer discipline?

Yes. In addition to the discipline rules proscribed by OSPI, school districts must ensure that local policies and procedures are consistent with all applicable federal and state legal requirements.

Federal legal requirements include, but are not limited to:

- *Goss v. Lopez* (1975)— the U.S. Supreme Court decision that established the minimum level of due process that must be afforded students facing a suspension of up to ten school days;
- The Every Student Succeeds Act (2015)—which, among other provisions, requires school districts receiving certain federal funds to “support efforts to reduce the overuse of discipline practices that remove students from the classroom” (ESSA, Section 1112(b)(11));
- Part B of the Individuals with Disabilities Education Act—that, among other things, provides additional discipline protections to students with disabilities who are receiving special education services; and
- Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964—which prohibit discrimination based on disability, race, color, and national origin in programs or activities that receive Federal financial assistance.

State laws include, but are not limited to:

- [Chapter 392-401 WAC](#), regarding the state definition for absence and reasons for excused absences—including provisions regarding absences during suspension or expulsion;
- RCW [28A.300.042](#), regarding the collection, reporting, and disaggregation of student-level discipline data; and

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- Chapters [28A.640](#) and [28A.642](#) RCW and [Chapter 392-190 WAC](#)—which prohibit discrimination in Washington public schools based on sex, race, creed, religion, color, national origin, sexual orientation including gender expression or identity, veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

### **B3. Are the new discipline rules in conflict with state statutes regarding student discipline?**

No. The new discipline rules augment state statutes regarding student discipline in a manner that is consistent with OSPI’s statutory authority to adopt discipline rules.

For more information on OSPI’s statutory authority to adopt discipline rules, refer to A1.

### **B4. Do the new discipline rules require school districts to adopt the exact same discipline policies and procedures?**

No. OSPI’s discipline rules establish uniform *minimum* due process requirements for student discipline in school districts. However, school districts may adopt policies and procedures setting forth expectations that provide additional procedural protections for students.

The new discipline rules augment statutory provisions that require school districts to consult with school district staff, students, parents, families, and the community when developing and reviewing district discipline policies and procedures. See RCW [28A.320.211](#); RCW [28A.600.020](#)(3).

### **B5. Do the new discipline rules prevent school districts from using suspension or expulsion?**

No. Consistent with state statutes and guidance as well as federal guidance and laws, the new discipline rules provide that school districts may use suspension or expulsion only as a last resort. OSPI’s statutory authority to prescribe rules governing the procedural and substantive due process guarantees of students in schools is constrained by other statutes governing student discipline. For example, limitations on the maximum length of a suspension or expulsion and limitations on the types of behavior for which a district may consider long-term suspension or expulsion are established in statute. See RCW [28A.600.015](#)(6); RCW [28A.600.020](#)(6).

For more information about federal guidance on this topic, refer to [Guiding Principles: A Resource Guide for Improving School Climate and Discipline](#).

For more information about state guidance on this topic, refer to the [Behavior Menu of Best Practices and Strategies](#).

### **B6. Do the new discipline rules require school districts to suspend or expel a student for certain behaviors?**

No. With the exception of a firearms violation under federal law, school districts are not required to suspend or expel students for any behavioral violation. State law explicitly encourages school districts to consider alternative actions before administering suspension or expulsion. See RCW [28A.600.015](#)(7).

Starting in the 2019–20 school year the new rules require school districts to first attempt one or more other forms of discipline to support the student in meeting behavioral expectations before administering a short-term or in-school suspension. For long-term suspensions and expulsions, the new rules require school districts to at least consider other forms of discipline to support the student in meeting behavioral expectations. Therefore, by the start of the 2019–20 school year, school districts must eliminate any zero-tolerance approaches in local discipline policies and procedures that require a mandatory suspension or expulsion in response to any

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behavioral violation other than firearms violations. See WAC 392-400-435(1); WAC 392-400-440(1); WAC 392-400-445(1).

For more information on the new discipline rules effective dates, refer to Appendix A.

### **B7. Are the new discipline rules at odds with efforts school districts are making to ensure all students are safe in school?**

No. One purpose of the rules is to ensure that school districts provide a safe and supportive learning environment for all students. See WAC 392-400-010(8).

Consistent with state statutes, several provisions in the new rules allow the use of exclusionary discipline to address school safety concerns. These provisions include rules governing emergency expulsions (WAC 392-400-510(1)), long-term suspensions and expulsions (WAC 392-400-440(2); WAC 392-400-445(2)), petitions to extend expulsions (WAC 392-400-480), the protection of victims (WAC 392-400-810), and firearm violations (WAC 392-40-820).

In addition, the new rules do not limit school districts from taking a range of appropriate actions to respond to threats or aggressive behavior without resorting to suspension or expulsion—including using a threat assessment to manage or reduce a threat posed by a student.

As recognized in state and federal laws, school climate can be negatively impacted when school districts overuse exclusionary discipline practices. The new discipline rules are consistent with RCW [28A.600.015](#)(7), which provides that, with the exception of firearm violations, school districts are not required to administer suspension or expulsion for any behavioral violation and should first consider alternative actions. The new discipline rules are also consistent with the [Every Student Succeeds Act \(ESSA\)](#), which requires state plans to include how the state will support school districts “to improve school conditions for student learning, including through reducing . . . the overuse of discipline practices that remove students from the classroom.” See ESSA, Section 1111(g)(1)(C)(ii).

For more information on school climate—including strategies for reducing the overuse of exclusionary discipline practices—see the [Behavior Menu of Best Practices and Strategies](#).

For more information about school safety—including information regarding threat assessments—refer to the [School Safety Center](#).

## **C. New Student Discipline Rules Effective Dates**

### **C1. Why did OSPI decide to have two distinct effective dates for different sections of the new discipline rules?**

OSPI determined a phased approach would provide ample time for school districts to implement new due process procedures, train school personnel, and engage with students, parents, teachers, and communities in order to develop appropriate local student discipline policies.

### **C2. Which provisions of the new discipline rules become effective for the start of the 2018–19 school year?**

Among other provisions, new sections pertaining to classroom exclusions, educational services, reengagement, and behavior agreements become effective on August 30, 2018. Starting in the 2018–19 school year, the new

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rules will also explicitly prohibit a school district from suspending or expelling a student from school for absences or tardiness.

For more information on the new discipline rules effective dates, refer to Appendix A.

### **C3. Which provisions of the new discipline rules become effective for the start of the 2019–20 school year?**

New school district requirements pertaining to, among other things, due process procedures for suspensions, expulsions, and emergency expulsions will become effective at the beginning of the 2019–20 school year—including several new conditions and limitations on the use of suspension, expulsion, and emergency expulsion. By the start of the 2019–20 school year, school districts must adopt district grievance procedures for other forms of discipline, classroom exclusions, and discipline that excludes students from transportation or extra-curricular activities.

School district policies and procedures will have to identify other forms of discipline that school personnel should administer before or instead of exclusionary discipline. District policies and procedures will also have to describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under the new rules.

For more information on the new discipline rules effective dates, refer to Appendix A.

## **D. Parent and Family Engagement**

### **D1. Do the new discipline rules provide more opportunities for parents and families to engage in the discipline process?**

Yes. Consistent with statutory provisions regarding parent and family engagement, one purpose of the new rules is to ensure school districts engage parents and families in decisions related to the development and implementation of discipline policies and procedures. See RCW [28A.320.211](#); RCW [28A.600.020](#)(3); WAC 392-400-010(3).

Starting in the 2018–19 school year, school districts will be required to notify parents as soon as reasonably possible about classroom exclusions. See WAC 392-400-335(2). Starting in the 2019–20 school year, school districts will be required to provide increased opportunities for parent participation during an initial hearing with the student. See WAC 392-400-450(2).

Several current laws emphasize family engagement strategies and the importance of parent and family engagement. These laws include RCW [28A.165.035](#) (regarding the state menu of best practices and strategies for behavior, which includes “Family Engagement” as a best practice), RCW [28A.415.410](#) (regarding training to support school personnel in implementing discipline policies and procedures), and RCW [28A.415.420](#) (regarding educators gaining knowledge and skills in cultural competence). The new discipline rules specify that the rules must be construed in a manner consistent with those laws, among others. See WAC 392-400-020.

For more information on the new discipline rules effective dates, refer to Appendix A.

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### **D2. Do the new discipline rules include considerations for culturally and linguistically diverse students and families?**

Yes. One purpose of the rules is to ensure that school districts implement culturally responsive discipline policies and procedures that provide opportunity for all students to achieve personal and academic success. See WAC 392-400-010(2).

The new rules define “culturally responsive” to align with the meaning of “cultural competency” under state laws pertaining to educator performance standards. According to state law, school districts are encouraged to provide opportunities for all school and school district staff to gain knowledge and skills in cultural competence, including in partnership with their local communities. See RCW [28A.415.420](#); WAC 392-400-023(4); WAC 392-400-025(3).

The new discipline rules also clarify that language access requirements under federal and state laws apply to parent notification and communications related to discipline procedures.

### **D3. Will parents and families have opportunities to provide input on local district discipline policies and procedures?**

Yes. Washington laws require school districts to involve students, parents, families and the community when developing and updating local discipline policies. Therefore, parents and families should have a voice in setting school behavior expectations, categories of behavioral violations, and appropriate discipline practices. Parents and families who are interested in providing input on a school district’s discipline policies and procedures should consider attending a school board meeting or contacting the district superintendent to learn more about how to get involved. See RCW [28A.320.211](#).

Starting in the 2019–20 school year, school districts will be required to use disaggregated discipline data when reviewing and updating discipline policies and procedures with families to (1) monitor the impact of the district’s policies, procedures, and practices; and (2) update district policies and procedures to ensure fairness and equity in the administration of discipline. See WAC 392-400-110(2).

For more information on the new discipline rules effective dates, refer to Appendix A.

## **E. Best Practices and Other Forms of Discipline**

### **E1. Do the new discipline rules support the use of positive behavioral interventions?**

Yes. The new rules specify that the rules must be construed in a manner consistent with RCW [28A.165.035](#), regarding the state menu of best practices and strategies for behavior. See WAC 392-400-020(2)(e). Since 2015, OSPI has developed, published, and provided training on the behavior menu. Since the 2016 update, the behavior menu has included a section on Multi-Tiered System of Supports (MTSS); a “Content Philosophy” section that addresses social-emotional learning (SEL); cultural responsiveness and equity in student discipline; school climate; using exclusionary discipline as a last resort; and best practices such as restorative justice, behavior monitoring, trauma-informed approaches, and family engagement. OSPI updates the menu annually to incorporate new research and resources.

For more information about the state menu of best practices and strategies for behavior, see [Menus of Best Practices and Strategies](#).



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### **E2. Do the new rules require school districts to consider using best practices or other forms of discipline?**

Yes. Consistent with statutory requirements, the new rules require school districts to first attempt one or more other forms of discipline before administering classroom exclusion, unless the student’s presence poses an immediate and continuing danger to others or an immediate and continuing threat to the educational process. See RCW [28A.600.020\(2\)](#); WAC 392-400-330(2). Under the new rules, “other forms of discipline” is a specifically defined term that refers to discipline other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior. See WAC 392-400-023(5); WAC 392-400-025(9).

Starting in the 2019–20 school year, the new rules require school districts to first attempt one or more other forms of discipline to support the student in meeting behavioral expectations before administering a short-term or in-school suspension. See WAC 392-400-435(1). For long-term suspensions and expulsions, the new rules require school districts to at least consider other forms of discipline to support the student in meeting behavioral expectations. See WAC 392-400-440(1); WAC 392-400-445(1). Therefore, by the start of the 2019–20 school year, school districts must eliminate any zero-tolerance approaches in local discipline policies and procedures that would require a mandatory suspension or expulsion in response to any behavioral violation other than firearms violations.

For more information on the new discipline rules effective dates, refer to Appendix A.

### **E3. May school districts require school personnel to use best practices instead of exclusionary discipline for certain behavioral violations?**

Yes. OSPI’s discipline rules establish uniform minimum due process requirements for student discipline in school districts. However, school districts may adopt policies and procedures setting forth expectations that provide additional procedural protections for students.

### **E4. Will OSPI develop additional resources related to discipline and the use of best practices?**

Yes. OSPI is developing discipline training modules in accordance with RCW [28A.415.410](#) that will cover best practices and laws related to student discipline within the context of Washington K–12 educational settings.

For more information about the OSPI discipline training materials, see [Student Discipline Training](#).

## **F. Classroom Exclusions**

### **F1. What is a “classroom exclusion” under the new rules?**

The new rules specifically define a category of discipline—“classroom exclusions”—starting in the 2018-19 school year. Under the rules, a classroom exclusion is the exclusion of a student from a classroom or instructional or activity area for behavioral violations. See WAC 392-400-023(2); WAC 392-400-025(2).

A classroom exclusion does not include actions that result in missed instruction for a brief duration when (1) a teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations, and (2) the student remains under the supervision of the teacher or other school personnel during such brief duration.

### **F2. Do the new discipline rules include any new procedures related to classroom exclusions?**

Yes. The new rules require parent notification following a classroom exclusion. See WAC 392-400-335(2).



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For the 2018–19 school year, the current grievance procedure will remain in place. See WAC 392-400-240. By the 2019–20 school year, school districts will need to develop local grievance procedures for classroom exclusions. The new discipline rules provide that grievance procedures adopted by a school district must include an opportunity for the student to share their perspective and explanation regarding the behavioral violation. See WAC 392-400-110(1)(h).

For more information on the new discipline rules effective dates, refer to Appendix A.

### **F3. Do the new discipline rules limit a teacher’s statutory authority to exclude a student from the classroom?**

No. The new rules are consistent with the statutory provision regarding a teacher’s authority to exclude a student from the teacher’s classroom—including the statutory provision regarding the principal and teacher conferring. See RCW [28A.600.020](#)(2).

The new rules do not prescribe the means by which a principal and teacher confer regarding a classroom exclusion. The rules provide that when a classroom exclusion exceeds the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion. However, the rules do not abridge the maximum duration of time that a teacher may exclude a student under statute.

Districts may adopt discipline policies and procedures regarding the means by which the principal (or designee) and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district.

### **F4. Does a classroom exclusion include any instance where a teacher might send a student from the classroom to another location in the school?**

No. The new discipline rules includes a formal definition for classroom exclusion, which specifies that classroom exclusions must be in response to behavioral violations. See WAC 392-400-023(2); WAC 392-400-025(2). For example, sending a student with a hallway pass to meet with a counselor for reasons unrelated to a behavioral violation would not constitute a classroom exclusion, whereas taking similar actions in response to a behavioral violation—such as issuing an office discipline referral (ODR) to send a student to the dean’s office—would constitute a classroom exclusion.

### **F5. Teachers sometimes respond to a behavioral violation by directing the student to leave the classroom so they can have a conversation in the hallway. Would that action constitute a classroom exclusion under the new discipline rules?**

It depends. The new discipline rules clarify that a classroom exclusion does not include actions that result in missed instruction for a brief duration when (1) a teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations, and (2) the student remains under the supervision of the teacher or other school personnel during such brief duration. See WAC 392-400-023(2); WAC 392-400-025(2).

For example, if a student remains under the teacher’s supervision while in the hallway for a brief period of time and the purpose of the conversation is to support the student in meeting behavioral expectations, the teacher’s action would constitute “other forms of discipline” under the new rules. Similarly, if the teacher calls a building administrator to the classroom to have a brief conversation with the student for purposes of reinforcing classroom expectations, that action would not constitute a classroom exclusion.

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However, if a teacher directs the student to go into the hallway and leaves the student there unsupervised—or with a para-professional for longer than a brief duration of time—those actions would constitute a classroom exclusion.

### G. Suspensions

#### **G1. Is the statewide definition for suspension different under the new discipline rules?**

Yes. The new definition for suspension no longer includes the “balance of the immediate class period” (the measure for defining “suspension” in the prior rules) as a standard for determining whether an exclusionary action constitutes a suspension. The new definition clarifies that a suspension is a denial of attendance “in response to a behavioral violation” and clearly states that a suspension is categorically as well as procedurally different from a classroom exclusion, expulsion, or emergency expulsion. See WAC 392-400-023(16); WAC 392-400-025(14).

The new definitions section that becomes effective for the 2019–20 school year makes it clear that suspension includes out-of-school and in-school suspensions—while further clarifying what due process procedures apply for each type of suspension.

For more information on the new discipline rules effective dates, refer to Appendix A.

#### **G2. Do the new discipline rules retain grade-level protections that limit the use of suspensions for Washington’s youngest learners?**

Yes. The new discipline rules retain longstanding provisions that limit the total number of short-term suspension days a student in grades K–4 or grades 5–12 may receive during any single semester or trimester. The rules also continue to prohibit the use of long-term suspension for students in grades K–4. See WAC 392-400-245(3); WAC 392-400-260(5); WAC 392-400-435(3); WAC 392-400-440(4).

#### **G3. Do the new rules clarify when a school district may use long-term suspension in response to certain behaviors?**

Yes. The new rules reference the statute that sets limitations on which categories of behavioral violations can be grounds for using long-term suspension. See RCW [28A.600.015](#)(6).

Additionally, and consistent with the statutory limits, the new rules provide that the length of a long-term suspension must be determined based on whether the student would pose an imminent danger to others or an imminent threat to the educational process should the student return to school before the proposed end date of the suspension. A school district making a determination under this standard will need to consider whether the district reasonably expects that a dangerous or threatening situation would occur in the school environment absent an imposed period of suspension. This standard becomes effective starting in the 2019–20 school year and is intended to protect students from unnecessary exclusions that are not related to adequately ensuring a safe and supportive learning environment for all students. See WAC 392-400-440(2).

For more information on the new discipline rules effective dates, refer to Appendix A.

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### **G4. If a school sends a student home early, or tells a parent to keep their student home from school because of a student’s behavioral violation, would such actions constitute a suspension under the new discipline rules?**

Yes. Sending a student home early or requesting a student stay at home in response to behavioral violations is a suspension (even if the school calls it an “early dismissal” or “student pick-up” or “day off” or some other term). School districts may not suspend a student without first providing the student due process. Before a school can send a student home for a behavioral violation, the school must hold an informal hearing with the student. State law, under the prior and new discipline rules, prohibits a school district from sending a student home or telling a parent to keep a student at home for behavioral violations without the benefit of an informal hearing.

### **G5. If a school district administers a suspension in the middle of a semester or trimester, would the suspension need to end by the start of the new academic term?**

No. The “length of an academic term” is a duration of time equal to the cumulative number of school days within a semester or trimester, and does not mean a duration lasting until the end of an academic term. See RCW [28A.600.020](#)(6); WAC 392-400-023(10); WAC 392-400-025(8). However, a suspension cannot be administered beyond the school year in which the behavioral violation occurred. See WAC 392-400-023(11); WAC 392-400-435(2); WAC 392-400-440(3).

### **G6. Are there other changes in the new discipline rules regarding the use of suspensions?**

Yes. Starting in the 2019–20 school year, the new rules require school districts to first attempt one or more other forms of discipline to support the student in meeting behavioral expectations before administering a short-term or in-school suspension. See WAC 392-400-435(1). For long-term suspensions and expulsions, the new rules require school districts to at least consider other forms of discipline to support the student in meeting behavioral expectations. See WAC 392-400-440(1); WAC 392-400-445(1). Therefore, by the start of the 2019–20 school year, school districts must eliminate any zero-tolerance approaches in local discipline policies and procedures that would require a mandatory suspension in response to any behavioral violation.

For more information on the new discipline rules effective dates, refer to Appendix A.

## **H. Expulsions**

### **H1. Is the statewide definition for expulsion different under the new discipline rules?**

Yes. The new definition for expulsion that becomes effective July 1, 2019 clarifies that an expulsion is a denial of admission to the student’s current school placement in response to a behavioral violation. See WAC 392-400-025(7).

For more information on the new discipline rules effective dates, refer to Appendix A.

### **H2. Do the new rules clarify when a school district may use expulsion in response to certain behaviors?**

Yes. The new rules reference the statute that sets limitations on which categories of behavioral violations can be grounds for using expulsion. See RCW [28A.600.015](#)(6).

Additionally, and consistent with the statutory limits, the new rules provide that the length of an expulsion must be determined based on whether the student would pose an imminent danger to others should the student return to school before the proposed end date of the expulsion. A school district making a determination under this standard will need to consider whether the district reasonably expects that a dangerous situation would

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occur in the school environment absent an imposed period of expulsion. This standard becomes effective starting in the 2019–20 school year and is intended to protect students from unnecessary exclusions that are not related to adequately ensuring a safe and supportive learning environment for all students. See WAC 392-400-445(2).

For more information on the new discipline rules effective dates, refer to Appendix A.

### **H3. If a school district administers an expulsion in the middle of a semester or trimester, would the expulsion need to end by the start of the new academic term?**

No. The “length of an academic term” is a duration of time equal to the cumulative number of school days within a semester or trimester, and does not mean a duration lasting until the end of an academic term. See RCW [28A.600.020](#)(6); WAC 392-400-023(10); WAC 392-400-025(8); WAC 392-400-445(3).

### **H4. Is an expulsion any different from a long-term suspension?**

Yes. An expulsion is different from a long-term suspension in several ways:

- (1) Although the maximum length of long-term suspension and expulsion is limited to the length of an academic term, a school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred. No such limitation applies to the use of expulsion. See WAC 392-400-023(11); WAC 392-400-440(3).
- (2) Although the maximum length of a long-term suspension and expulsion is limited to the length of an academic term, a school district may extend the length of an expulsion when warranted, based on public health or safety. No such process applies to the use of long-term suspension. See RCW [28A.600.020](#)(6); WAC 392-400-410; WAC 392-400-480.
- (3) A long-term suspension may be a denial of attendance from a single subject or class, multiple subjects or classes, or a full schedule of subjects or classes. An expulsion is a denial of admission to the student’s current school placement, inclusive of the student’s full schedule of subjects or classes at that school. See WAC 392-400-023(9), (11); WAC 392-400-025(7), (14)(b).
- (4) Starting in the 2019–20 school year, school districts will be required to determine the length of a long-term suspension based on whether the student would pose an imminent danger to others or an imminent threat to the educational process should the student return to school before the proposed end date of the suspension. In contrast, the length of an expulsion is limited to a determination based on whether the student would pose an imminent danger to others should the student return to school before the proposed end date of the expulsion. See WAC 392-400-440(2); WAC 392-400-445(2). Refer to G3 and H2.

For more information on the new discipline rules effective dates, refer to Appendix A.

### **H6. If a school district administratively transfers a student to another school or program in response to a behavioral violation, would such actions constitute an expulsion under the new discipline rules?**

Yes. The new discipline rules clarify that expulsions are “a denial of admission” that are administered “in response to a behavioral violation.” Accordingly, like the prior rules, the new rules require school districts to provide notice and due process any time a district refers a student to another school in response to a behavioral violation. See WAC 392-400-023(9), (16); WAC 392-400-025(7), (14).

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The new rules also specify that, if a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, except in limited cases. *See* WAC 392-400-430(9).

### **H7. Are there other changes in the new discipline rules regarding the use of expulsions?**

Yes. Starting in the 2019–20 school year the new rules require school districts to at least consider other forms of discipline to support the student in meeting behavioral expectations before administering an expulsion. Therefore, by the start of the 2019–20 school year, school districts must eliminate any zero-tolerance approaches in local discipline policies and procedures that would require a mandatory expulsion in response to any behavioral violation other than firearms violations. *See* WAC 392-400-445(1). Additionally, with the exception of firearms violations, the new rules will prohibit school districts from using expulsion for students in grades K–4. *See* WAC 392-400-445(4).

For more information on the new discipline rules effective dates, refer to Appendix A.

## **I. Emergency Expulsions**

### **I1. Do the new rules clarify under what circumstances a school district may use emergency expulsion?**

Yes. The new rules clarify that, under limited circumstances, a school district may immediately remove a student from school without first holding an informal hearing with the student. Consistent with the prior rules, the new rules provide that school districts may use emergency expulsions in situations where a district believes a student's presence in the building poses either an immediate and continuing danger to others or an immediate and continuing threat to the educational process. *See* WAC 392-400-295; WAC 392-400-510.

Effective July 1, 2019, the new rules clarify the meaning of "an immediate and continuing threat of material and substantial disruption of the educational process" for purposes of determining whether an emergency expulsion is warranted. The clarification provides that (1) the student's behavior must create a substantial barrier to learning for other students, and (2) the school district must have exhausted reasonable attempts to support the student in meeting behavioral expectations. *See* WAC 392-400-510(2).

For more information on the new discipline rules effective dates, refer to Appendix A.

### **I2. Do school districts have to provide notice and due process after administering an emergency expulsion?**

Yes. Emergency expulsions must end or be converted to another discipline action within 10 school days. *See* RCW [28A.600.015](#)(3).

The new rules provide that school districts must notify parents about the emergency expulsion and the right to appeal within 24 hours after the school district removes the student from school. Consistent with statutory requirements, the new rules provide that school districts must provide additional notice and due process whenever a school district converts the emergency expulsion to a suspension or expulsion. *See* WAC 392-400-295; WAC 392-400-300; WAC 392-400-510; WAC 392-400-515.

### **I3. Are there grade-level limitations that apply to the use of emergency expulsions?**

No. The new rules do not include grade-level limitations for emergency expulsions.

### J. Educational Services

#### **J1. Can a school district deny a student educational services in response to a behavioral violation?**

No. School districts are expressly precluded by statute from suspending the provision of educational services when imposing suspension or expulsion. See RCW [28A.600.015](#)(5), (8). The new discipline rules require school districts to provide students the opportunity to receive educational services that enable the student to (1) continue to participate in the general education curriculum, (2) meet the educational standards established within the district, and (3) complete subject, grade-level, and graduation requirements. See WAC 392-400-610(1)(a).

The new discipline rules also provide that, as soon as reasonably possible after administering a suspension or expulsion, school districts must provide written notice to the student and parents about the educational services the district will provide. This notice must include a description of the educational services that will be provided, and the name and contact information for the school personnel who can offer support to keep the student current with assignments and course work. See WAC 392-400-610(2).

Starting in 2019, school districts must adopt policies that, among other things, describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to follow for the provision of educational services under the new rules. See WAC 392-400-110(i).

For more information on the new discipline rules effective dates, refer to Appendix A.

#### **J2. Does a suspended or expelled student who is receiving educational services that are comparable to the educational services the student would have received without the exclusionary discipline still have a right to appeal the suspension or expulsion?**

Yes. Due process for students who are charged with violating a school district discipline policy is not just about protecting a student's entitlement to basic education as a property interest. The Fourteenth Amendment's Due Process Clause also forbids arbitrary deprivations of a student's liberty interest in preserving a good name, reputation, honor, or integrity. *Goss v. Lopez*, 419 U.S. 565 at 574. "If sustained and recorded, charges [against a student] could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." *Id.* The minimum due process procedures set forth in the new discipline rules protect this important right.

#### **J3. Can a school district claim state funds for students who are suspended or expelled and receiving educational services during the period of the exclusionary action?**

Yes. OSPI amended WAC [392-121-108](#) in 2016 to remove suspensions and expulsions from the list of enrollment exclusions so that school districts can now claim state funding for students who have been long-term suspended or expelled. As long as a suspended or expelled student is receiving educational services in accordance with program requirements under state law before the monthly count day, a school district may claim state funds for students who are suspended or expelled.

For more information on student enrollment, state apportionment, and program requirements, refer to the 2018–19 [Enrollment Reporting Handbook](#).

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### **J4. If a school district needs to provide a student transportation services to participate in educational services during the period of a suspension or expulsion, can state funds pay for the transportation costs?**

Yes. In accordance with [Chapter 28A.160 RCW](#), school districts may claim transportation funding for providing students transportation to an alternative setting during the duration of a suspension or expulsion.

### **J5. Can a school district use the truancy process if a student does not participate in the educational services during the suspension or expulsion?**

No. Under recently enacted OSPI rules governing student absences, [Chapter 392-401 WAC](#), student absences due to suspensions, expulsions, or emergency expulsions administered in accordance with OSPI's discipline rules count as excused absences when the student is not receiving educational services and not enrolled in qualifying course of study activities in accordance with WAC [392-121-107](#). See WAC 392-401-020(9).

Students with excused absences are not deemed truant for purposes of the state's compulsory education laws.

### **J6. Does a school district have to ensure that suspended or expelled students are provided in-person contact with school personnel who are responsible for supporting the student's educational progress or coordinating the delivery and grading of course work?**

No. The new discipline rules do not mandate in-person contact between school personnel and suspended or expelled students. The methodology that school districts use to provide the support and coordination required under the new rules is left to the discretion of local school personnel. However, the new discipline rules do not preclude school districts from adopting policies and procedures that require in-person contact.

## **K. Reengagement**

### **K1. Is the reengagement process different from an appeal process?**

Yes. The new discipline rules clarify that reengagement meetings do not replace an appeal hearing. See WAC 392-400-710(5).

State law requires school districts to meet with the student and parents to develop a reengagement plan. The meeting must be held within twenty days and no later than five days before the end date of a long-term suspension or expulsion. Additionally, the state's new discipline rules provide that the meeting must be held sooner if the family requests an early meeting. See RCW [28A.600.022](#); WAC 392-400-710.

The reengagement process must involve the family in the development of a culturally responsive plan that is "tailored to the student's individual circumstances" to support the student's successful return to school. When developing the plan with the family, school districts are required to consider:

- The nature and circumstances of the discipline incident;
- The student's cultural histories and contexts, family norms and values, and community resources;
- Shortening the length of the suspension or expulsion;
- Academic and nonacademic supports to aid the student's academic success; and
- Supports that the student, parents, or school personnel may need to prevent a similar incident from happening again



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### **K2. Do the new rules require school districts to convene a reengagement meeting for short-term suspensions?**

No. Consistent with statute, reengagement meetings and plans are required for long-term suspension or expulsion. See RCW [28A.600.022](#). However, nothing in the new rules precludes a school district from holding a reengagement meeting for short-term suspensions.

### **K3. Are school districts supposed to use the reengagement process to determine what educational services the district should provide to a student during a suspension or expulsion?**

No. Requirements regarding the provision of educational services are independent from the reengagement process. For information about educational services during suspension or expulsion, refer to J1.

The reengagement process involves considering shortening the length of time the student is suspended or expelled and discussing supportive interventions that aid in the student's academic success and keep the student engaged and on track to graduate. In addition, the reengagement process must involve the family in the development of a culturally responsive plan that is tailored to the student's individual circumstances. See RCW [28A.600.022](#). Therefore, the reengagement process is an opportunity for school districts to account for whether the educational services the district initially provided the student were sufficient and, if not, develop an appropriate plan.

## **L. Special Education**

### **L1. Do the new discipline rules apply to students receiving special education services?**

Yes. The new rules are intended to establish uniform minimum due process requirements for student discipline in school districts. The rules apply to *all* students, regardless of whether the students are eligible for special education services or a Section 504 plan. State and federal special education laws, including the [Individuals with Disabilities Education Act](#) and its implementing regulations, impose additional requirements on school districts with regard to students with disabilities. See [Chapter 392-172A WAC](#) and [34 CFR 104.35\(a\)](#).

The application section of the final rules clarifies that the proposed rules must be construed in a manner consistent with existing state and federal laws concerning students receiving special education services— including anti-discrimination laws that protect students under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. See WAC 392-400-020(2)(c), (2)(d).

For more information about protections for students with disabilities, see [Special Education Behavior and Discipline](#) and [Section 504 and Students with Disabilities](#).

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### Appendix A: OSPI Student Discipline Rules Effective Dates

The following table indicates which sections of the new discipline rules become effective for the 2018–19 and 2019–20 school years.

**Red text** indicates the section is new for that school year.

**Blue text** in the 2018–19 school year column indicates the sections OSPI amended from the prior rules.

2018–19 School Year WAC 392-400	2019–20 School Year WAC 392-400
<b>-010 Purpose.</b>	<b>-010 Purpose.</b>
<b>-015 Authority.</b>	<b>-015 Authority.</b>
<b>-020 Application.</b>	<b>-020 Application.</b>
<p><b>-023 Definitions.</b></p> <p>New:</p> <ul style="list-style-type: none"> <li>• Behavioral violation</li> <li>• Classroom exclusion</li> <li>• Culturally responsive</li> <li>• Disruption of the educational process</li> <li>• Length of an academic term</li> <li>• Parent</li> </ul> <p>Interim:</p> <ul style="list-style-type: none"> <li>• Corrective action</li> <li>• Discipline or other forms of discipline</li> </ul> <p>Amended:</p> <ul style="list-style-type: none"> <li>• Suspension</li> </ul> <p>Repealed:</p> <ul style="list-style-type: none"> <li>• Discipline</li> <li>• Reengagement meeting</li> <li>• Reengagement plan</li> </ul>	<p><b>-025 Definitions.</b></p> <p>New:</p> <ul style="list-style-type: none"> <li>• Discipline</li> <li>• In-school suspension</li> <li>• Other forms of discipline</li> <li>• School board</li> </ul> <p>Amended:</p> <ul style="list-style-type: none"> <li>• Emergency Expulsion</li> <li>• Expulsion</li> <li>• Long-term suspension</li> <li>• School business day</li> <li>• School day</li> <li>• Short-term suspension</li> </ul> <p>Repealed:</p> <ul style="list-style-type: none"> <li>• Discretionary discipline</li> </ul>
<b>-225 School district rules defining misconduct—Distribution of rules.</b>	<b>-110 Discipline policies and procedures—Development, review, and distribution.</b>
<b>-226 School district rules defining harassment, intimidation and bullying prevention policies and procedures—Distribution of rules.</b>	<b>-226 repealed.</b> <ul style="list-style-type: none"> <li>• Provisions moved to another chapter in the Washington Administrative Code.</li> </ul>
<b>-230 Persons authorized to impose discipline, suspension, or expulsion upon students.</b> <ul style="list-style-type: none"> <li>• Emergency removal provision removed due to new provisions under section <b>-330</b>.</li> </ul>	<b>-230 repealed.</b> <ul style="list-style-type: none"> <li>• New provisions under section <b>-110</b>.</li> </ul>
<b>-233 Absences, tardiness, and school meals.</b> <ul style="list-style-type: none"> <li>• Unexcused absences provisions removed due to new provisions under <a href="#">Chapter 392-401 WAC</a>.</li> <li>• New provision added prohibiting a school district from suspending or expelling a student from school for absences or tardiness.</li> <li>• New provision added regarding school meals in response to statutory provision under RCW <a href="#">28A.235.270(1)(d)</a>.</li> </ul>	<b>-233 repealed.</b> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-430</b> and <b>-830</b>.</li> </ul>

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<p><b>-235 Discipline—Conditions and limitations.</b></p> <ul style="list-style-type: none"> <li>• Corporal punishment provisions moved under section <b>-825.</b></li> </ul>	<p><b>-235 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-110</b> and <b>-610.</b></li> </ul>
<p><b>-240 Discipline—Grievance procedure.</b></p>	<p><b>-240 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-110.</b></li> </ul>
<p><b>-245 Short-term suspension—Conditions and limitations.</b></p>	<p><b>-245 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-430</b> and <b>-435.</b></li> </ul>
	<p><b>-430 Suspensions and expulsions—General conditions and limitations.</b></p>
	<p><b>-435 Short-term and in-school suspensions—Additional conditions and limitations.</b></p>
<p><b>-250 Short-term suspension—Prior conference required—Notice to parent.</b></p>	<p><b>-250 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-450.</b></li> </ul>
<p><b>-255 Short-term suspension—Grievance procedure.</b></p>	<p><b>-255 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-465.</b></li> </ul>
<p><b>-260 Long-term suspension—Conditions and limitations.</b></p>	<p><b>-260 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-440.</b></li> </ul>
	<p><b>-440 Long-term suspensions—Additional conditions and limitations.</b></p>
<p><b>-265 Long-term suspension—Notice of hearing—Waiver of hearing.</b></p>	<p><b>-265 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-450</b> and <b>-455.</b></li> </ul>
<p><b>-270 Long-term suspension—Prehearing and hearing process.</b></p>	<p><b>-270 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-465.</b></li> </ul>
<p><b>-275 Expulsion—Conditions and limitations.</b></p>	<p><b>-275 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-445.</b></li> </ul>
	<p><b>-445 Expulsions—Additional conditions and limitations.</b></p>
<p><b>-280 Expulsion—Notice of hearing—Waiver of hearing.</b></p>	<p><b>-280 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-450</b> and <b>-455.</b></li> </ul>
	<p><b>-450 Suspensions and expulsions—Initial hearing with student.</b></p>
	<p><b>-455 Suspensions and expulsions—Notice to student and parents.</b></p>
<p><b>-285 Expulsion—Prehearing and hearing process.</b></p>	<p><b>-285 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under sections <b>-460</b> and <b>-465.</b></li> </ul>
	<p><b>-460 Suspensions and expulsions—Optional conference with principal.</b></p>
	<p><b>-465 Suspensions and expulsions—Appeal.</b></p>
	<p><b>-470 Suspensions and expulsions—Review and reconsideration.</b></p>
	<p><b>-475 Discipline appeal council.</b></p>
	<p><b>-480 Petition to extend expulsion.</b></p>
<p><b>-295 Emergency expulsion—Limitations.</b></p>	<p><b>-295 repealed.</b></p> <ul style="list-style-type: none"> <li>• New provisions under section <b>-510.</b></li> </ul>

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	<b>-510 Emergency expulsions—Conditions and limitations.</b>
<b>-300 Emergency expulsion—Notice of hearing—Waiver of hearing right.</b>	<b><u>-300 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under section <b>-515.</b></li> </ul> <b>-515 Emergency expulsions—Notice to student and parents.</b>
<b>-305 Emergency expulsion—Prehearing and hearing process.</b>	<b><u>-305 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under sections <b>-520</b> and <b>525.</b></li> </ul> <b>-520 Emergency expulsions—Optional conference with principal.</b> <b>-525 Emergency expulsions—Appeal.</b>
<b>-310 Appeals—Long-term suspension and expulsion.</b>	<b><u>-310 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under sections <b>-475</b> and <b>-530.</b></li> </ul> <b>-530 Emergency expulsions—Review and reconsideration.</b>
<b>-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.</b>	<b><u>-315 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under section <b>-530.</b></li> </ul>
<b>-317 Appeals—Discipline and short-term suspension grievances.</b>	<b><u>-317 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under sections <b>-110</b> and <b>-475.</b></li> </ul>
<b>-320 School board or disciplinary appeal council decisions.</b>	<b><u>-320 repealed.</u></b> <ul style="list-style-type: none"> <li>New provisions under sections <b>-470</b> and <b>-530.</b></li> </ul>
<b>-330 Classroom exclusions—Conditions and limitations.</b>	<b>-330 Classroom exclusions—Conditions and limitations.</b>
<b>-335 Classroom exclusion—Notice and procedure.</b>	<b>-335 Classroom exclusion—Notice and procedure.</b>
<b>-410 Appeal for extension of an expulsion.</b>	<b><u>-410 repealed.</u></b> New provisions under section <b>-480.</b>
<b>-610 Educational services during suspension, expulsion, or emergency expulsion.</b>	<b>-610 Educational services during suspension, expulsion, or emergency expulsion.</b>
<b>-710 Student reengagement after long-term suspension or expulsion.</b>	<b>-710 Student reengagement after long-term suspension or expulsion.</b>
<b>-805 Fundamental rights.</b>	<b>-805 Fundamental rights.</b>
<b>-810 Exceptions for the purpose of protecting victims.</b>	<b>-810 Exceptions for the purpose of protecting victims.</b>
<b>-815 Behavior agreements.</b>	<b>-815 Behavior agreements.</b>
<b>-820 Firearm exceptions.</b>	<b>-820 Firearm exceptions.</b>
<b>-825 Corporal punishment, restraint, and isolation.</b>	<b>-825 Corporal punishment, restraint, and isolation.</b>
<b>-830 School meals.</b>	<b>-830 School meals.</b>