

Chapter 72-120 WAC

STUDENT CONDUCT CODE

WAC

72-120-010	Student responsibilities and duties.
72-120-015	Student rights.
CONDUCT RULES	
72-120-100	Conduct violations.
DISCIPLINE	
72-120-200	Policy.
72-120-205	Limitations.
72-120-210	Emergency removal from class or activity.
72-120-220	Short-term suspension.
72-120-225	Short-term suspension—Notice and conference— Grievance procedure.
72-120-230	Long-term suspension.
72-120-234	Long-term suspension—Misconduct not a manifesta- tion of disability—Notice.
72-120-236	Long-term suspension—Misconduct not a manifesta- tion of disability—Hearing.
DISCIPLINARY EXCLUSION	
72-120-300	Disciplinary exclusion—Definitions.
72-120-301	Change of placement for disciplinary removals.
72-120-302	Removals—Ten school days or less.
72-120-303	Required services.
72-120-304	Change of placement—Removals for weapons or drugs.
72-120-305	Functional behavioral assessment and intervention plan.
72-120-306	Dangerous behavior—Authority of hearing officer.
72-120-307	Determination of interim alternative educational setting.
72-120-308	Manifestation determination review requirements.
72-120-309	Procedures for conducting a manifestation determina- tion.
72-120-310	Determination that behavior was not manifestation of disability.
72-120-311	Expedited due process hearings.
72-120-312	Placement during appeals.
72-120-313	Referral to and action by law enforcement and judicial authorities.
72-120-314	Aversive interventions.

WAC 72-120-010 Student responsibilities and duties.

The mission of the Washington state school for the blind is to provide specialized educational services to visually impaired students which will assist those students to develop skills, competencies and attitudes that are fundamental to the development of responsible, contributing citizens. Admission to the Washington state school for the blind carries with it the obligation of responsibility for the welfare of the school. In order to advance the mission of the school, it shall be the responsibility and duty of each student to pursue his/her course of studies, respect the rights of others, comply with written rules adopted herein, and submit to reasonable disciplinary action for violation(s) of such rules. This chapter is intended to assure that disciplinary action is imposed for just cause and in a fair and reasonable manner.

[Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-010, filed 7/19/90, effective 8/19/90.]

WAC 72-120-015 Student rights. (1) Each student is guaranteed the following rights, within the limitations of statutory law and school policy which are deemed necessary to achieve the school's educational goals:

(a) Students possess the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.

(b) Students possess the rights, guaranteed under the Constitution, to freedom of expression, free inquiry, and peaceable assembly upon and within school facilities that are generally open and available to the public.

(c) Students possess the rights, guaranteed under the Constitution, to the free exercise of religion and to have their school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(d) Students possess the constitutional right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures, subject to limitations set forth in RCW 28A.67.300, 28A.67.310, 28A.67.320, and 28A.67.330.

(e) Students shall have the right to be free from unlawful interference in their pursuit of an education while enrolled at the Washington state school for the blind.

(f) Students shall not be deprived of the right to an equal educational opportunity in whole or in part by the Washington state school for the blind without due process including:

(i) Notice to the accused of the nature of the charges and the proposed disciplinary action; and

(ii) The opportunity to request a hearing as set forth in this chapter.

(2) The foregoing enumeration of rights shall not be construed to deny or disparage other rights guaranteed in the Constitution and the laws of the state of Washington.

(3) The school shall publish and make available to all students and parents, on an annual basis, written rules which state with reasonable clarity the types of misconduct for which disciplinary action may be imposed.

[Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-015, filed 7/19/90, effective 8/19/90.]

CONDUCT RULES

WAC 72-120-100 Conduct violations. A student who, either as actor, aider, abettor, or accomplice, violates any provision of this chapter shall be subject to the disciplinary actions herein adopted. A student may be an accomplice, or found to have aided and abetted in committing a violation of the student conduct code if he or she associates with, encourages, promotes, or counsels another student in the commission of an offense, or participates in it as something he or she wishes to bring about, and seeks by his or her action to make it succeed.

The following offenses are prohibited:

(1) Physical abuse. Actual, attempted, or threatened physical abuse of any person or conduct which threatens or endangers the health and safety of any person or which inten-

tionally causes a reasonable apprehension of harm to any person.

(2) Destroying or damaging property. Destroying, defacing, or damaging school property or the property of others on school premises or at school-sponsored activities.

(3) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.

(4) Disruption. Disorderly or abusive behavior which interferes with the rights of others, school, or school-sponsored activities; obstructing the free movement of people or vehicles; inciting others to engage in prohibited conduct; or threatening disruption.

(5) Disturbing the peace. Creating noise in such a way as to interfere with school functions.

(6) Insubordination. Refusal or failure to follow instructions and proper orders of school officials, while on school premises or at school-sponsored activities, thereby infringing upon the rights and privileges of others, and/or refusal to desist from prohibited conduct.

(7) False alarms. Falsely setting off, improper use or disabling of any safety equipment, alarm, exit sign, or other device.

(8) False information. Filing a formal complaint which falsely accuses another with violation of this chapter, falsifying information to school officials, or forging or tendering any forged instrument to the school.

(9) Theft. Actual or attempted theft of property or services belonging to the school, any student, school employee or school visitor, including knowing possession of stolen property.

(10) Conversion. Unauthorized use of school equipment or services.

(11) Academic dishonesty. All forms of cheating, plagiarism and fabrication, including submitting any work product that the student misrepresents as his/her work product for the purpose of fulfilling any assignment or task required as part of the student's course of studies.

(12) Unlawful entry and trespassing. Entering and/or remaining in any administrative or other employee office or any locked or otherwise closed school facility, in any manner, at any time, without permission.

(13) Smoking. The Washington state school for the blind supports the goal of the governor's nonsmoking policy and the policy of the public schools mandating a total ban on the use of all tobacco products by September 1, 1991. Students are not allowed to smoke or use tobacco products on school premises or during school-sponsored activities.

(14) Alcohol. Use, possession, distribution of, or visible intoxication from alcoholic beverages is prohibited on school property or at school-sponsored activities.

(15) Drugs and controlled substances. Use, possession, distribution, or being visibly under the influence of any controlled substance or illegal drug as defined in WAC 72-120-300, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist.

(16) Weapons and dangerous chemicals. Unauthorized use, possession or storage of any weapon, explosives, danger-

ous chemicals, substances or instruments, which may be used to inflict bodily harm on another or damage upon school property or personal property.

(17) Other conduct. Any other conduct or action, the terms and violations of which are published annually in the student/parent handbook, in which the school can demonstrate a clear and distinct interest and which substantially threatens the educational process or other legitimate function of the school or the health or safety of any member of the school community is prohibited.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-100, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-100, filed 7/19/90, effective 8/19/90.]

DISCIPLINE

WAC 72-120-200 Policy. The Washington state school for the blind has established standards of conduct for students and the disciplinary process to protect members of the school community, maintain and advance its educational mission, and provide for the orderly conduct of the school's activities. Disciplinary procedures used by the school are considered part of its educational process. School policy and rules of conduct shall be applicable to all students in any program or activity conducted by the Washington state school for the blind. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate disciplinary actions will be administered on a less restrictive alternative basis, including but not limited to time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, or suspension.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-200, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-200, filed 7/19/90, effective 8/19/90.]

WAC 72-120-205 Limitations. (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: Provided, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the board of education in WAC 180-40-235 and the unreasonable use of force on children described in RCW 9A.16.100 as now or hereafter amended, is prohibited.

[Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-205, filed 7/19/90, effective 8/19/90.]

WAC 72-120-210 Emergency removal from class or activity. (1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the principal or a designated school authority: Provided, That the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the school. The removal from classes, subjects, or activities shall continue only until:

(a) The danger or threat ceases; or
 (b) The principal or designated school authority acts to impose disciplinary action pursuant to this chapter.

(2) The principal or school authority shall meet with the student as soon as reasonably possible following the student's removal and take appropriate disciplinary action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the next school day. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or school authority shall notify the teacher or administrator who removed the student therefrom of the action which has been taken.

[Statutory Authority: RCW 72.40.022, 90-16-005, § 72-120-210, filed 7/19/90, effective 8/19/90.]

WAC 72-120-220 Short-term suspension. (1) As used in this chapter "short-term suspension" shall mean a denial of attendance at any class or admission to or entry upon school property for up to and not exceeding ten consecutive school days.

(2) Short-term suspensions may be imposed upon a student for violation(s) of rules adopted in WAC 72-120-100.

(3) A student may be suspended for a short term after another less restrictive form of disciplinary action, reasonably calculated to modify his or her conduct, has been imposed as a consequence of misconduct of the same nature: Provided, That the school may resort to immediate short-term suspension in cases involving exceptional misconduct notwithstanding the fact that prior alternative corrective action or discipline has not been imposed. For the purposes of this section, "exceptional misconduct" means misconduct, other than absenteeism, of such frequent occurrence, notwithstanding prior attempts by the school to control such misconduct through the use of other forms of disciplinary action, and/or so serious in nature and/or so serious in terms of disruptive effect upon the operation of the school as to warrant immediate resort to short-term suspension.

(4) Any student subject to short-term suspension shall be provided the opportunity upon return to make up assignments and tests missed by reason of the suspension if such assignments or tests have a substantial effect upon the semester grade.

[Statutory Authority: RCW 72.4.011 [72.40.022], 01-16-023, § 72-120-220, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022, 90-16-005, § 72-120-220, filed 7/19/90, effective 8/19/90.]

WAC 72-120-225 Short-term suspension—Notice and conference—Grievance procedure. (1) Prior to the short-term suspension of any student pursuant to WAC 72-120-220, a conference shall be conducted with the student as follows:

(a) An oral or written notice of the alleged misconduct and violation(s) of school rules shall be provided to the student;

(b) An oral or written explanation of the evidence in support of the allegation(s) shall be provided to the student;

(c) An oral or written explanation of the corrective action or discipline which may be imposed shall be provided to the student; and

(d) The student shall have the opportunity to present his/her explanation.

(7/20/01)

(2) In the event a suspension is to exceed one calendar day the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to an informal conference pursuant to subsection (3) of this section and that the suspension may possibly be reduced as a result of such conference.

(3) Any student, parent, or guardian aggrieved by the imposition of a short-term suspension shall have the right to an informal conference with the principal or his or her designee for the purpose of resolving the grievance. The school personnel member whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During the conference, the student, parent, or guardian shall be subject to questioning by the principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. If the grievance is not resolved, the student, parent, or guardian, upon two school business days' prior notice, shall have the right to present a written and/or oral grievance to the superintendent who shall notify the student, parent, or guardian of his or her response to the grievance within ten school business days after receipt of the written or oral grievance. The disciplinary action may continue notwithstanding the implementation of the grievance procedure set forth in this section.

[Statutory Authority: RCW 72.4.011 [72.40.022], 01-16-023, § 72-120-225, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022, 90-16-005, § 72-120-225, filed 7/19/90, effective 8/19/90.]

WAC 72-120-230 Long-term suspension. (1) As used in this chapter "long-term suspension" shall mean a denial of attendance at any class or admission to or entry upon school property in excess of ten consecutive school days.

(2) Long-term suspensions may be imposed on a student for violation(s) of rules adopted in WAC 72-120-100.

(3) When a student engages in conduct that would warrant long-term suspension, requirements and procedures for disciplinary exclusion, found at WAC 72-120-300 through 72-120-313 shall be followed.

[Statutory Authority: RCW 72.4.011 [72.40.022], 01-16-023, § 72-120-230, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022, 90-16-005, § 72-120-230, filed 7/19/90, effective 8/19/90.]

WAC 72-120-234 Long-term suspension—Misconduct not a manifestation of disability—Notice. (1) Following a determination that behavior which warrants a long-term suspension was not a manifestation of the student's disability, a student may be suspended for a long term after another less restrictive form of disciplinary action, reasonably calculated to modify his or her conduct, has been imposed as a consequence of misconduct of the same nature: Provided, That the school may resort to immediate long-term suspension in cases involving exceptional misconduct notwithstanding the fact that prior alternative corrective action or discipline has not been imposed. For the purposes of this section, "exceptional misconduct" means misconduct, other than absenteeism, of such frequent occurrence, notwithstanding prior attempt by the school to control such misconduct through the use of other forms of disciplinary action, and/or so serious in

[Ch. 72-120 WAC—p. 3]

nature and/or so serious in terms of the disruptive effect upon the operation of the school as to warrant immediate resort to long-term suspension.

(2) Prior to the long-term suspension of any student for misconduct which was not a manifestation of the student's disability, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and parent(s) or guardian(s). The notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible;

(b) Specify the alleged misconduct and the rule(s) alleged to have been violated;

(c) Set forth the disciplinary action proposed;

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s);

(e) State that a written request for a hearing must be received by the school employee designated, or by his or her office within three school business days after receipt of the notice of opportunity for a hearing; and

(f) State that if such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed. A schedule of school business days should be included with the notice.

(3) If a request for a hearing is not received within the required three school business day period, the school may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed long-term suspension may be imposed.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-234, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-234, filed 7/19/90, effective 8/19/90.]

WAC 72-120-236 Long-term suspension—Misconduct not a manifestation of disability—Hearing. (1) If a request for a hearing is received pursuant to WAC 72-120-234 within the required time period, the superintendent or his or her designee shall schedule a hearing to commence within seven school days after the date upon which the request for a hearing was received according to the requirements in chapter 10-08 WAC adopted in WAC 72-108-010.

(2) The hearing shall be a brief adjudicative proceeding in accordance with WAC 72-108-100. The hearing process described in WAC 180-40-270, applicable to long-term suspensions involving students without disabilities, should apply as guidelines for the conduct of the brief adjudicative proceeding.

(3) During the pendency of any administrative or judicial proceeding involving suspension under this section, unless the school and the parent(s) of the student (or the eligible student as defined in WAC 72-171-010(1)) agree otherwise, the student shall remain in the educational placement he or she was in when the request for hearing was made.

(4) Nothing in this section shall be construed to limit the superintendent's ability to seek injunctive relief in appropriate cases from a court of competent jurisdiction.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-236, filed 7/20/01, effective 8/20/01. Statutory Authority: RCW 72.40.022. 90-16-005, § 72-120-236, filed 7/19/90, effective 8/19/90.]

DISCIPLINARY EXCLUSION

WAC 72-120-300 Disciplinary exclusion—Definitions. The following definitions apply to this section only:

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

(2) "Illegal drug" means a controlled substance, but does not include, a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

(3) "Weapon" has the meaning given the term "dangerous weapon" under section 930 (g)(2) of Title 18 U.S.C.: "Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length.

(4) "Substantial evidence" means beyond a preponderance of the evidence.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-300, filed 7/20/01, effective 8/20/01.]

WAC 72-120-301 Change of placement for disciplinary removals. For purposes of removals of a student from the student's current educational placement under this section, a change of placement occurs if:

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

(2) The student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-301, filed 7/20/01, effective 8/20/01.]

WAC 72-120-302 Removals—Ten school days or less. School personnel may order the removal of a student from the student's current placement for not more than ten consecutive school days for any violation of school rules, including the student conduct code, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 72-120-202.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-302, filed 7/20/01, effective 8/20/01.]

WAC 72-120-303 Required services. (1) In the case of a student who has been removed from his or her current placement for more than ten cumulative school days in the same school year, the school, for the remainder of the removals, shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum.

lum and advance toward achieving the goals set out in the student's individualized education program.

(2) When there is no change of placement, school personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-303, filed 7/20/01, effective 8/20/01.]

WAC 72-120-304 Change of placement—Removals for weapons or drugs. School personnel may order a change in placement of a student to an appropriate interim alternative educational setting for not more than forty-five calendar days, if the student:

(1) Possesses a weapon, or carries a weapon to school or to a school function under the jurisdiction of the state school for the blind; or

(2) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state school for the blind.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-304, filed 7/20/01, effective 8/20/01.]

WAC 72-120-305 Functional behavioral assessment and intervention plan. Within ten business days after first removing a student for more than ten consecutive school days in a school year or placing the student in an interim alternative educational setting, the following actions shall be taken by the school:

(1) If the school did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, an individualized education program meeting will be convened to develop an assessment plan.

(2) If the student already has a behavioral intervention plan, the individualized education program team shall meet to review the plan and its implementation to determine whether modifications are necessary.

(3) As soon as practicable after developing the assessment plan described in subsection (1) of this section, and completing the assessments required by the plan, an IEP meeting will be convened to develop appropriate behavioral interventions to address the behavior that resulted in removal and to implement those interventions.

(4) If a student has a behavioral intervention plan and has been removed from the current educational placement for more than ten cumulative school days in a school year, and is subsequently subjected to a removal that does not constitute a change of placement under WAC 72-120-301, the IEP team may review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(5) If one or more of the IEP team members believe that modifications to an existing behavioral intervention plan are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-305, filed 7/20/01, effective 8/20/01.]

(7/20/01)

WAC 72-120-306 Dangerous behavior—Authority of hearing officer. A hearing officer, described in WAC 392-172-352 (adopted by reference in WAC 72-171-601), may order a change in the placement of a student to an appropriate interim alternative educational setting for not more than forty-five days if the hearing officer, in an expedited due process hearing:

(1) Determines that the school has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

(2)(a) Considers the appropriateness of the student's current placement;

(b) Including, when necessary, the requirements and limitations imposed by RCW 72.40.040(4), 72.40.050(2), 72.40.250(2), and 72.40.270;

(3) Considers whether the school has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of WAC 72-120-307.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-306, filed 7/20/01, effective 8/20/01.]

WAC 72-120-307 Determination of interim alternative educational setting. The individualized education program team shall determine an interim alternative educational setting. Any interim alternative educational setting in which a student is placed under WAC 72-120-304 and 72-120-306 shall:

(1) Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(2) Include services and modifications designed to address and prevent the recurrence of the behavior described in WAC 72-120-304 or 72-120-306.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-307, filed 7/20/01, effective 8/20/01.]

WAC 72-120-308 Manifestation determination review requirements. If school personnel or a hearing officer contemplates action that involves removing a student for behavior described in WAC 72-120-304 or behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct which results in a change of placement under WAC 72-120-301, the school shall:

(1) Not later than the date on which the decision to take action is made, notify the parents of the school's decision and provide the procedural safeguards notice described under WAC 392-172-307; and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to remove the student is made, conduct a review of the relationship

between the student's disability and the behavior subject to the disciplinary action.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-308, filed 7/20/01, effective 8/20/01.]

WAC 72-120-309 Procedures for conducting a manifestation determination. The individualized education program team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team:

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information, including:

(a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;

(b) Observations of the student; and

(c) The student's individualized education program and placement.

(2) Then determines that:

(a) In relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement;

(b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

(3) If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's disability.

(4) The manifestation determination review described in this section may be conducted at the same individualized education program meeting that is convened to address a functional behavioral assessment and behavioral intervention plan.

(5) If the review identifies deficiencies in the student's IEP or placement or in their implementation, the school will take immediate steps to remedy those deficiencies.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-309, filed 7/20/01, effective 8/20/01.]

WAC 72-120-310 Determination that behavior was not manifestation of disability. (1) If the results of the manifestation determination review indicate that the behavior of the student was not a manifestation of the student's disability, the student may be subject to the same disciplinary measures applicable to students without disabilities, including long-term suspensions and expulsions, except that a free appropriate public education shall continue to be made available to those students consistent with 34 CFR Sec. 300.121(d).

(2) The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has

been determined not to be a manifestation of the student's disability.

(3) If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, then the student shall remain in the current educational placement or interim alternative educational setting consistent with WAC 72-120-312, whichever applies.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-310, filed 7/20/01, effective 8/20/01.]

WAC 72-120-311 Expedited due process hearings.

(1) "Expedited due process hearing" means a hearing that is conducted by a due process hearing officer, in accordance with WAC 72-171-601 (impartial due process hearing rights) and this section, and may be requested in any of the following situations:

(a) The parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability.

(b) The parent disagrees with the school's decision regarding the student's disciplinary change of placement under WAC 72-120-304.

(c) The school maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting or to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings.

(2) Pursuant to WAC 392-172-350 (adopted by reference in WAC 72-171-601) the office of the superintendent of public instruction shall arrange for an expedited hearing in any case described in subsection (1) of this section if requested by the parent.

(3) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the school has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of WAC 72-120-309.

(4) In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards under WAC 72-120-306.

(5) An expedited due process hearing shall:

(a) Result in a written decision being mailed to the parties within forty-five days of the office of the superintendent of public instruction's receipt of the request for the hearing without exceptions or extensions. The timeline established in this subsection shall be the same for hearings requested by parents or the school;

(b) Meet the requirements of WAC 392-172-354 (adopted by reference in WAC 72-171-601) except that the time periods identified for the disclosure of records and evaluations for purposes of expedited due process hearings are not less than two business days prior to the hearing; and

(c) Be conducted by a due process hearing officer who satisfies the impartiality requirements of WAC 392-172-352 (adopted by reference in WAC 72-171-601).

(6) The decisions on expedited due process hearings are appealable under the state's due process appeal procedures (see WAC 72-171-601 and 392-172-360).

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-311, filed 7/20/01, effective 8/20/01.]

WAC 72-120-312 Placement during appeals. (1) If a parent requests a hearing regarding a disciplinary action described in WAC 72-120-304 or 72-120-306 to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five day time period provided for, whichever occurs first, unless the parent and the school agree otherwise.

(2) If a student is placed in an interim alternative educational setting pursuant to this section and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided for below.

(3) In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under WAC 72-120-306.

(4) A placement ordered pursuant to this section may not be longer than forty-five days.

(5) The procedure in this section may be repeated as necessary.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-312, filed 7/20/01, effective 8/20/01.]

WAC 72-120-313 Referral to and action by law enforcement and judicial authorities. (1) Nothing in Part B of the Individuals with Disabilities Education Act, or this chapter prohibits the Washington state school for the blind from reporting a crime committed by a student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student.

(2) When reporting a crime committed by a student, the school shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(3) When reporting a crime under this section, the school may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-313, filed 7/20/01, effective 8/20/01.]

WAC 72-120-314 Aversive interventions. WAC 392-172-388 through 392-172-396 are adopted by reference.

[Statutory Authority: RCW 72.4.011 [72.40.022]. 01-16-023, § 72-120-314, filed 7/20/01, effective 8/20/01.]