

Chapter 392-400 WAC

PUPILS

(Formerly chapter 180-40 WAC)

WAC

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WAC 392-400-200 Purpose and application. The purpose of this chapter is to implement RCW 28A.600.015 by prescribing the substantive and procedural due process rights of students served by any program or activity conducted by, or on behalf of, a common school district: Provided that the enforcement of rules adopted by the Washington interscholastic activity association and like organizations that govern the participation of students in interschool activities, and

appeals in connection therewith, shall be governed by rules of the organization that have been adopted pursuant to RCW 28A.600.200. The procedures and standards set forth in this chapter, and those adopted by a school district in conformance with this chapter, shall govern the imposition of corrective action (i.e., discipline, suspension, and expulsion) upon any student by a school district and its agents.

The provisions of this chapter are intended to establish the minimum procedural and substantive due process rights of students. School districts are free to establish additional due process requirements and limitations and shall do so as necessary to accommodate the constitutional rights of students as now or hereafter established.

For rules regarding student conduct which supplement this chapter see chapter 392-145 WAC governing the operation of school buses, particularly WAC 392-145-015(4) regarding the responsibility of bus drivers and certificated staff members who accompany students for the behavior of students, and WAC 392-145-035 regarding the duty to adopt and post rules, including rules of conduct, governing school bus passengers.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-200, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-200, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-200, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-200, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132. WSR 82-20-052 (Order 4-82), § 180-40-200, filed 10/1/82; Order 6-77, § 180-40-200, filed 6/2/77, effective 8/1/77.]

WAC 392-400-205 Definitions. As used in this chapter the term:

(1) "Discipline" shall mean all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided that the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of a school district.

(2) "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

(3) "Short-term suspension" shall mean a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days.

(4) "Long-term suspension" shall mean a suspension that:

(a) Exceeds ten school days and has an end date of not more than the length of an academic term, as defined by the school board, from the time of corrective action;

(b) Cannot be imposed in such a manner that causes the student to lose academic grades or credit in excess of one semester or trimester during the same school year; and

(c) Cannot be imposed beyond the school year in which the alleged misbehavior occurs.

(5) "Emergency expulsion" shall mean an emergency removal from school for up to, and not exceeding, ten consecutive school days from the student's current school placement by a school district superintendent or a designee of the superintendent. The superintendent or designee must have good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school.

(6) "Expulsion" shall mean a denial of attendance for a period of time up to, but not longer than, the length of an academic term, as defined by the school board, from the time a student is removed from his or her current school placement by a school district superintendent or a designee of the superintendent. An expulsion also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

(7) "School business day" shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(8) "School day" shall mean a calendar day except school holidays on which students enrolled in the school district are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

(9) "Reengagement meeting" shall mean a meeting held between the school district and the student and parent and/or guardian to discuss how to return a long-term suspended or expelled student to an education setting as soon as possible.

(10) "Reengagement plan" shall mean a written plan developed between a school district and a student and his/her parent or guardian designed to aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion and return the student to the educational setting as soon as possible.

(11) "Discretionary discipline" shall mean a disciplinary action taken by a school district for student behavior that violates rules of student conduct adopted by a school district board of directors under RCW 28A.600.010 and 28A.600.015, but does not constitute action taken in response to any of the following:

(a) A violation of RCW 28A.600.420;

(b) An offense in RCW 13.04.155;

(c) Two or more violations of RCW 9A.46.120, 9A.41.280, 28A.600.455, 28A.635.020, or 28A.635.060 within a three-year period; or

(d) Behavior that adversely impacts the health or safety of other students or educational staff.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-205, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-205, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-205, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-205, filed 7/22/96, effective 8/22/96. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-205, filed 10/16/79; Order 6-77, § 180-40-205, filed 6/2/77, effective 8/1/77.]

WAC 392-400-210 Student responsibilities and duties. The mission of the common school system is to provide learning experience which will assist all students to develop skills, competencies, and attitudes that are fundamental to an individual's achievement as a responsible, contributing citizen. In order to maintain and advance this mission, it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC 392-400-225 and RCW 28A.600.-010, and submit to reasonable corrective action imposed by a school district and its agents for violation(s) of such rules. The provisions of this chapter do not lessen the foregoing responsibilities and duties of each student. This chapter is intended to assure that corrective action is imposed for just cause and in a fair and just manner.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-210, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-210, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-210, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-210, filed 8/6/90, effective 9/6/90; Order 6-77, § 180-40-210, filed 6/2/77, effective 8/1/77.]

WAC 392-400-215 Student rights. In addition to other rights established by law, each student served by or on behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

(1) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal.

(2) All students possess the constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(3) All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.

(4) All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.

(5) No student shall be deprived of the right to an equal educational opportunity, in whole or in part, by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-215, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-215, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 85-04-009 (Order 3-85), § 180-40-215, filed 1/25/85; Order 6-77, § 180-40-215, filed 6/2/77, effective 8/1/77.]

WAC 392-400-220 Student disciplinary boards—Establishment at option of school district—Functions.

The board of directors of any school district may authorize the establishment of one or more student disciplinary boards composed of students, teachers, administrators, or parents, or any combination thereof. Disciplinary boards may be authorized to prescribe reasonable discipline and may recommend, but not prescribe, suspension or expulsion to the appropriate school authority. Such school authority shall be granted the power to set aside or modify any such prescription or recommendation. In addition, disciplinary boards may be authorized to periodically review rules of the school district defining the types of misconduct for which corrective action may be imposed and to recommend amendments to the board of directors.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-220, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-220, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-220, filed 6/2/77, effective 8/1/77.]

WAC 392-400-225 School district rules defining misconduct—Distribution of rules. (1) It shall be the responsibility and duty of each school district to adopt, publish, and make available to all students and parents written rules which state with reasonable clarity the types of misconduct for which discipline, suspension, and expulsion may be imposed. In addition, written procedures for administering corrective action shall be developed and reviewed periodically as follows:

(a) Each school district shall provide for the development with parent and community participation of written procedures for administering corrective action at each school as required by RCW 28A.600.020(3).

(b) In a manner consistent with the district procedures developed pursuant to (a) above, the principal and certificated employees in each school building shall confer at least annually for the purpose of developing, or reviewing, or both, building discipline standards and the uniform enforcement of those standards, as required by RCW 28A.400.110.

(c) School districts shall use disaggregated data collected pursuant to RCW 28A.300.042 to monitor the impact of the school district's discipline policies and procedures, as required by WAC 392-190-048.

(d) School districts, in consultation with school district staff, students, families, and the community, shall periodically

review and update their discipline rules, policies, and procedures.

(2) Rules that establish types of misconduct pursuant to this section must have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process which is conducive to learning.

(3) The rules set forth in this chapter, the rules of a school district that establish types of misconduct pursuant to subsection (1) above, and the written procedures of a district for administering corrective action adopted pursuant to subsection (1)(a) and (d) of this subsection, shall be published and made available to all students and parents on an annual basis. School districts shall annually disseminate discipline policies and procedures to students, families, and the community.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-225, filed 8/26/16, effective 9/1/16. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-225, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-225, filed 8/6/90, effective 9/6/90. Statutory Authority: 1980 c 171. WSR 80-10-030 (Order 11-80), § 180-40-225, filed 8/4/80; Order 6-77, § 180-40-225, filed 6/2/77, effective 8/1/77.]

WAC 392-400-226 School district rules defining harassment, intimidation and bullying prevention policies and procedures—Distribution of rules.

A district's harassment, intimidation and bullying policy and procedure shall be published and made available to all parents or guardians, students, employees, and volunteers on an annual basis. The district will publish, at a minimum, the following materials: Policy and procedure, an incident reporting form and current contact information for the district's harassment, intimidation and bullying compliance officer. If a school district chooses not to distribute such rules to all parents or guardians, students, employees, and volunteers, then notice which describes the contents of such rules and specifies the person(s) to contact for a copy shall be provided to students and parents on an annual basis in a manner reasonably calculated to come to their attention.

[Statutory Authority: RCW 28A.300.285. WSR 11-04-076, § 392-400-226, filed 1/31/11, effective 3/3/11.]

WAC 392-400-227 School district rules defining students religious rights.

It shall be the responsibility and duty of each school district to adopt policies of the district for implementation of students' rights to freedom of religion and to have their schools free from sectarian control or influence while they are participating in any school district conducted or sponsored activity or while they are otherwise subject to school district supervision and control. Such rules shall be adopted and transmitted to the superintendent of public instruction.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-227, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-227, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 85-09-049 (Order 6-85), § 180-40-227, filed 4/16/85; WSR 85-04-009 (Order 3-85), § 180-40-227, filed 1/25/85.]

WAC 392-400-230 Persons authorized to impose discipline, suspension, expulsion, or emergency removal upon students. (1) Each certificated teacher, each school administrator, each school bus driver, and any other school employee designated by the board of directors of a school district shall possess the authority to impose discipline upon a student for misconduct which violates rules of the school district established pursuant to WAC 392-400-225 and to impose an emergency removal from a class, subject, or activity upon a student pursuant to WAC 392-400-290.

(2) The board of directors of any school district may delegate to the superintendent and/or his or her designee(s) the authority to impose suspensions and expulsions upon students for misconduct which violates rules of the school district established pursuant to WAC 392-400-225. Each certificated teacher and each administrator shall possess the authority to recommend suspensions and expulsions for such misconduct.

(3) Any board of directors which chooses not to delegate the authority to impose suspensions and/or expulsions, nevertheless, shall be subject to the requirements set forth in this chapter when it imposes a suspension or expulsion.

(4) Notwithstanding any provision of this section to the contrary, each teacher is empowered to exclude any student who creates a disruption of the educational process in violation of the building disciplinary standards while under the teacher's immediate supervision from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day or until the principal or designee and teacher have conferred, whichever occurs first: Provided, That except in emergency circumstances as provided for in WAC 392-400-290, the teacher shall have first attempted one or more alternative forms of corrective action: Provided further, That in no event without the consent of the teacher shall an excluded student be returned during the balance of the particular class or activity period from which the student was initially excluded.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-230, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-230, filed 6/22/06, effective 6/22/06. Statutory Authority: 1980 c 171. WSR 80-10-030 (Order 11-80), § 180-40-230, filed 8/4/80; Order 6-77, § 180-40-230, filed 6/2/77, effective 8/1/77.]

WAC 392-400-233 Unexcused absences and tardiness. (1) Students with one or more unexcused absences and subject to compulsory attendance pursuant to chapter 28A.225 RCW may be subject to corrective action reasonably calculated to modify the student's conduct. If a school district imposes corrective action on a student for one or more unexcused absences, the school district must:

(a) Provide notice to the student's parent(s) or guardian(s) in writing in English or, if different, the primary language of the parent(s) or guardian(s), that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Schedule a conference or conferences with the parent(s) or guardian(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, and to determine, by appropriate means, whether the student should be made a focus of

concern for placement in special programs designed for his or her educational success; and

(c) Take steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s) or guardian(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(2) A student's academic grade or credit in a particular subject or course may be adversely affected by reason of tardiness or absences only to the extent and upon the basis that:

(a) The student's attendance or participation is related to the instructional objectives or goals of the particular subject or course;

(b) The student's attendance or participation has been identified by the teacher pursuant to policy of the school district as a basis for grading, in whole or in part, in the particular subject or course; and

(c) The circumstances pertaining to the student's inability to attend school have been taken into consideration, including whether the tardiness or absences are directly related to the student's disability under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, or the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-233, filed 7/23/14, effective 8/23/14.]

DISCIPLINE

WAC 392-400-235 Discipline—Conditions and limitations. Discipline may be imposed upon any student for violation of the rules of the school district that have been established pursuant to this section, subject to the following limitations and conditions and the grievance procedure set forth in WAC 392-400-240:

(1) No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements.

(2) School districts may not suspend the provision of educational services to a student as a disciplinary action.

(3) Corporal punishment which is defined as any act which willfully inflicts or willfully causes the infliction of physical pain on a student is prohibited.

Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school employee or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students and school staff or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-235, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-235, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-235, filed 1/31/07, effective 3/3/07. Statutory Author-

ity: 2006 c 263. WSR 06-14-009, recodified as § 392-400-235, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.410.010. WSR 94-03-102 (Order 3-94), § 180-40-235, filed 1/19/94, effective 2/19/94. Statutory Authority: RCW 28A.305.160. WSR 93-01-077, § 180-40-235, filed 12/14/92, effective 1/14/93. Statutory Authority: RCW 28A.04.132. WSR 90-17-004, § 180-40-235, filed 8/2/90, effective 9/2/90; WSR 87-09-040 (Order 6-87), § 180-40-235, filed 4/14/87; Order 6-77, § 180-40-235, filed 6/2/77, effective 8/1/77.]

WAC 392-400-240 Discipline—Grievance procedure. Any student, parent, or guardian who is aggrieved by the imposition of discipline shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, 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 of the district or his/her designee. 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 board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The discipline action shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-240, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-240, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-240, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-240, filed 6/2/77, effective 8/1/77.]

SHORT-TERM SUSPENSION

WAC 392-400-245 Short-term suspension—Conditions and limitations. A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 392-400-250, and the grievance procedures set forth in WAC 392-400-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude the boards of directors of school districts from establishing the nature and extent of the corrective actions which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action is permissible as long as (a) disciplinarians and hearing officers are allowed to grant

exceptions in cases involving extenuating or exceptional circumstances, and (b) short-term suspension is not established as the corrective action for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a short term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating or exceptional circumstances, notwithstanding the fact prior alternative corrective action has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged, following consultation with an ad hoc citizens committee, to (a) be of such frequent occurrence, notwithstanding past attempts of district staff to control such misconduct through the use of other forms of corrective action, as to warrant an immediate resort to short-term suspension, or (b) be so serious in nature or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension. The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student in grades kindergarten through grade four shall be subject to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(4) No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(5) A student may be excluded from a particular classroom or instructional or activity area for the period of suspension, but the school district must provide an opportunity for a student to receive educational services during a period of suspension. Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-245, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-245, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-245, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-245, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 97-01-047, § 180-40-245, filed 12/12/96, effective 1/12/97. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-245, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132. WSR 85-12-042 (Order 14-85), § 180-40-245, filed 6/5/85. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-245, filed 10/16/79; Order 13-77, § 180-40-245, filed 10/18/77; Order 6-77, § 180-40-245, filed 6/2/77, effective 8/1/77.]

WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent. (1) Prior to the short-term suspension of any student 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 district 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 which may be imposed shall be provided to the student; and

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

(2) In the event a short-term 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 WAC 392-400-255 and that the suspension may possibly be reduced as a result of such conference.

(3) All short-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-250, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-250, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-250, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-250, filed 6/2/77, effective 8/1/77.]

WAC 392-400-255 Short-term suspension—Grievance procedure. Any student, parent, or guardian who is aggrieved by the imposition of a short-term suspension shall have the right to an informal conference with the building principal or his or her designee for the purpose of resolving the grievance. The employee whose action is being grieved shall be notified of the initiation of a grievance as soon as reasonably possible. During such conference the student, parent, or guardian shall be subject to questioning by the building principal or his or her designee and shall be entitled to question school personnel involved in the matter being grieved. Subsequent to the building level grievance meeting, 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 of the district or his/her designee. 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 board of directors during the board's next regular meeting or to the school district disciplinary appeal council if the board has delegated its responsibility to hear and decide such grievances to the council pursuant to WAC 392-400-317. The board or council shall notify the student, parent, or guardian of its response to the grievance within ten school business days after the date of the meeting. The short-term suspension shall continue notwithstanding the implementation of the grievance procedure set forth in this section unless the principal or his or her designee elects to postpone such action.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-255, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-255, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-255, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-255, filed 6/2/77, effective 8/1/77.]

LONG-TERM SUSPENSION

WAC 392-400-260 Long-term suspension—Conditions and limitations. A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 392-400-265 and the hearing requirements set forth in WAC 392-400-270:

(1) School districts may not impose long-term suspension as a form of discretionary discipline as defined in WAC 392-400-205(11).

(2) A student may be excluded from a particular classroom or instructional or activity area for the period of suspension, but the school district must provide an opportunity for a student to receive educational services during a period of suspension.

(3) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude the boards of directors of school districts from establishing the nature and extent of the corrective actions which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating or exceptional circumstances, and (b) long-term suspension is not established as the corrective action for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (4) of this section.

(4) As a general rule, no student shall be suspended for a long term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating or exceptional circumstances, notwithstanding the fact prior alternative corrective action has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct"

duct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district staff to control such misconduct through the use of other forms of corrective action, as to warrant an immediate resort to long-term suspension, or (b) be so serious in nature or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension. The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(5) No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(6) No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(8) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-260, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-260, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-260, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-260, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 97-08-019, § 180-40-260, filed 3/25/97, effective 4/25/97. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 97-01-047, § 180-40-260, filed 12/12/96, effective 1/12/97. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-260, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.132. WSR 85-12-042 (Order 14-85), § 180-40-260, filed 6/5/85. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-260, filed 10/16/79; Order 6-77, § 180-40-260, filed 6/2/77, effective 8/1/77.]

WAC 392-400-265 Long-term suspension—Notice of hearing—Waiver of hearing. (1) Prior to the long-term suspension of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her 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, in accordance with Title VI of the Civil Rights Act of 1964;

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

(c) Set forth the corrective action proposed;

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

(e) Set forth the facts that:

(i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and

(ii) 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 by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted in writing and may also be accepted orally.

(3) If a request for a hearing is not received within the required three school business day period, the school district 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 28A.600.015. WSR 14-15-153, § 392-400-265, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-265, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-265, filed 6/2/77, effective 8/1/77.]

WAC 392-400-270 Long-term suspension—Prehearing and hearing process. (1) If a request for a hearing is received pursuant to WAC 180-40-265 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness.

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect, in advance of the hearing, any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the nature and duration of the long-term suspension or lesser form or corrective action to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-270, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-270, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-270, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-270, filed 6/2/77, effective 8/1/77.]

EXPULSION

WAC 392-400-275 Expulsion—Conditions and limitations. A student may be expelled for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the notice requirements set forth in WAC 392-400-280, and the hearing requirements set forth in WAC 392-400-285:

(1) School districts may not impose expulsion as a form of discretionary discipline as defined in WAC 392-400-205(11).

(2) A student may be excluded from a particular classroom or instructional or activity area for the period of suspension or expulsion, but the school district must provide an opportunity for a student to receive educational services during a period of suspension or expulsion.

(3) The nature and circumstances of the violation must reasonably warrant the harshness of expulsion.

(4) No student shall be expelled unless other forms of corrective action reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action would fail if employed.

(5) An expulsion may not be for an indefinite period of time. An expulsion may not exceed the length of an academic term, as defined by the school board, from the date of the corrective action unless:

(a) The school petitions the district superintendent for an extension; and

(b) The district superintendent authorizes the extension in compliance with the superintendent of public instruction's rules adopted for this purpose.

(6) The district shall make reasonable efforts to assist students in returning to an educational setting prior to, and no later than, the end date of the corrective action.

(7) Once a student has been expelled in compliance with this chapter, the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs.

(8) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(9) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

[Statutory Authority: RCW 28A.600.015. WSR 16-18-028, § 392-400-275, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-275, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-275, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-275, filed 6/22/06, effective 6/22/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-40-275, filed 8/6/90, effective 9/6/90. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-275, filed 10/16/79; Order 6-77, § 180-40-275, filed 6/2/77, effective 8/1/77.]

WAC 392-400-280 Expulsion—Notice of hearing—Waiver of hearing. (1) Prior to the expulsion of a student, an oral or written notice of an opportunity for a hearing shall be delivered in person, or by certified mail to the student and to his or her 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, in accordance with Title VI of the Civil Rights Act of 1964;

(b) Specify the alleged misconduct and the school district rule(s) or policy alleged to have been violated;

(c) Set forth the corrective action proposed;

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

(e) Set forth the facts that:

(i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and

(ii) 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 expulsion may be imposed by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice; and

(2) The student or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally.

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

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-280, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-280, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-280, filed 6/2/77, effective 8/1/77.]

WAC 392-400-285 Expulsion—Prehearing and hearing process. (1) If a request for a hearing is received pursuant to WAC 392-400-280 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness.

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect, in advance of the hearing, any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the expulsion or lesser form of corrective action to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-285, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-285, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-285, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-285, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-285, filed 6/2/77, effective 8/1/77.]

(8/26/16)

EMERGENCY ACTIONS

WAC 392-400-290 Emergency removal from a class, subject, 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 building 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 staff or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the student's 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 corrective action.

(2) The principal or school authority shall meet with the student as soon as reasonably possible following the student's removal and take or initiate appropriate corrective action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the school day following the student's emergency removal from a class, subject, or activity. 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 or initiated.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-290, filed 7/23/14, effective 8/23/14. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-290, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-290, filed 6/2/77, effective 8/1/77.]

WAC 392-400-295 Emergency expulsion—Limitations. Notwithstanding any other provision of this chapter, a student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations: Provided that the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the expulsion. A school district must provide notice and due process rights if it converts the emergency expulsion to another form of corrective action.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-295, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-295, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-295, filed 6/22/06, effective 6/22/06; Order 6-77, § 180-40-295, filed 6/2/77, effective 8/1/77.]

WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right. (1) The student and his or her parent(s) or guardian(s) shall be notified of the emergency expulsion of the student and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s) or guardian(s) within twenty-four hours of the expulsion. School districts must document delivery of the

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notice by obtaining the signature of the parent(s) or guardian(s) acknowledging receipt or the written certification of the person making the delivery; or (b) by certified letter(s) deposited in the United States mail, within twenty-four hours of the expulsion. In addition, if the notice is by certified letter, reasonable attempts shall be made to notify the student and his or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral 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, in accordance with Title VI of the Civil Rights Act of 1964;

(b) Specify the alleged reasons that the student's presence poses an immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process;

(c) Set forth the date on which the emergency expulsion began and will end;

(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) as soon as reasonably possible; and

(e) Set forth the facts that:

(i) A written or oral request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing; and

(ii) 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 emergency expulsion may be continued, as deemed necessary, for up to ten school days from the date of the student's emergency removal from school without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing or orally.

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the emergency expulsion may be imposed, as deemed necessary, for a period of up to ten school days from the date of the emergency removal from school.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-300, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-300, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-300, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.132. WSR 86-20-055 (Order 13-86), § 180-40-300, filed 9/29/86; Order 6-77, § 180-40-300, filed 6/2/77, effective 8/1/77.]

WAC 392-400-305 Emergency expulsion—Prehearing and hearing process. (1) If a request for a hearing within the required three school business days is received pursuant

to WAC 392-400-300, the school district shall immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the second school business day after receipt of the request for hearing.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness;

(d) Present his or her explanation of the alleged misconduct; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and final decision regarding the imposition of corrective action shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) Within one school business day after the date upon which the hearing concludes, the person(s) hearing the case shall issue a decision regarding whether the emergency expulsion shall continue. The school district shall provide notice of the decision to the student and the student's parent(s), guardian(s), and legal counsel, if any, by depositing a certified letter in the United States mail. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether the immediate and continuing danger to students, school staff, or poses an immediate and continuing threat of substantial disruption of the educational process, giving rise to the emergency expulsion has terminated), and whether the emergency expulsion shall be converted to another form of corrective action.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-305, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-305, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-305, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-305, filed 3/3/00, effective 4/3/00; Order 6-77, § 180-40-305, filed 6/2/77, effective 8/1/77.]

APPEALS

WAC 392-400-310 Appeals—Long-term suspension and expulsion. Appeals from decisions rendered pursuant to WAC 392-400-270, 392-400-285 and 392-400-305 which impose either a long-term suspension or an expulsion upon a student shall be governed as follows:

(1) Any school district board of directors may delegate its authority to hear and decide long-term suspension and expulsion appeals to a school district disciplinary appeal council established by the board. School district disciplinary appeal councils shall be appointed by the school district board of directors for fixed terms and shall consist of not less than three persons.

(2) If the case was not heard and decided by the school district board of directors or school district disciplinary appeal council, the student and his or her parent(s) or guardian(s) shall have the right to appeal the decision to the board of directors or the disciplinary appeal council. Notice indicating that the student or his or her parent(s) or guardian(s) desire to appeal the decision shall be provided to either the office of the school district superintendent or to the office of the person who rendered the decision within three school business days after the date of receipt of the decision. The notice of appeal shall be accepted in writing or orally.

(3) If an appeal is not taken to the board of directors or disciplinary appeal council within the required three school business day period, the suspension or expulsion decided upon may be imposed as of the calendar day following expiration of the three school business day period.

(4) If a timely appeal is taken to the board of directors or disciplinary appeal council, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

(b) Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion; and

(c) Any student subjected to a temporary suspension who returns to school before the appeal is decided shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the suspension if:

(i) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(ii) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(5) An appeal from any decision of a school board or disciplinary appeal council to impose or to affirm the imposition of a long-term suspension or an expulsion shall be to the courts. Whether or not the decision of a school board or disciplinary appeal council shall be postponed pending an appeal to superior court shall be discretionary with the school board or disciplinary appeal council except as ordered otherwise by a court.

[Statutory Authority: RCW 28A.600.015. WSR 14-15-153, § 392-400-310, filed 7/23/14, effective 8/23/14. Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-310, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-310, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 97-08-019, § 180-40-310, filed 3/25/97, effective 4/25/97. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-310, filed 7/22/96, effective 8/22/96; Order 13-77, § 180-40-310, filed 10/18/77; Order 6-77, § 180-40-310, filed 6/2/77, effective 8/1/77.]

WAC 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures. (1) If a notice of appeal to the school board of directors or school district disciplinary appeal council is received pursuant to WAC 392-400-310(2) within the required three school business days, the board or council shall schedule and hold an informal conference to review the matter within ten school business days after the date of receipt of such appeal notice. The purpose of the meeting shall be to meet and confer with the parties in order to decide upon the most appropriate means of disposing of the appeal as provided for in this section. At that time the student or the student's parent(s) or guardian(s) or legal counsel shall be given the right to be heard and shall be granted the opportunity to present such witnesses and testimony as the board or council deems reasonable. The board or council shall agree to one of the following procedures prior to adjournment or recess:

(a) Study the hearing record or other material submitted and render its decision within ten school business days after the date of the informal conference, or

(b) Schedule and hold a meeting to hear further arguments based on the record before the board or council and render its decision within fifteen school business days after the date of the informal conference, or

(c) Schedule and hold a meeting within ten school business days after the date of the informal conference for the purpose of hearing the case de novo.

(2) In the event the school board of directors or school district disciplinary appeal council elects to hear the appeal de novo, the following rights and procedures shall govern the proceedings:

(a) The student and his or her parent(s) or guardian(s) shall have the right to:

(i) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(ii) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(A) That the district made a reasonable effort to produce the witness and is unable to do so; or,

(B) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness,

(iii) Present his or her explanation of the alleged misconduct, and

(iv) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires,

(b) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing, and

(c) Either a tape-recorded or verbatim record of the hearing shall be made.

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-315, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-315, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160. WSR 00-07-018, § 180-40-315, filed 3/3/00, effective 4/3/00. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-315, filed 7/22/96, effective 8/22/96. Statutory Authority: 1979 1st ex.s. c 173 and c 201. WSR 79-11-049 (Order 14-79), § 180-40-315, filed 10/16/79; Order 6-77, § 180-40-315, filed 6/2/77, effective 8/1/77.]

WAC 392-400-317 Appeals—Discipline and short-term suspension grievances. Any school district board of directors may delegate its authority to hear and decide discipline and short-term suspension grievance appeals filed pursuant to WAC 392-400-240 and 392-400-253 [392-400-255] to a school district disciplinary appeal council established pursuant to WAC 392-400-310(1).

[Statutory Authority: RCW 28A.305.160. WSR 07-04-048, § 392-400-317, filed 1/31/07, effective 3/3/07. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-317, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-317, filed 7/22/96, effective 8/22/96.]

WAC 392-400-320 School board or disciplinary appeal council decisions. Any decision by a school board of directors or school district disciplinary appeal council pursuant to this chapter to impose or to affirm, reverse, or modify the imposition of discipline, suspension, or expulsion upon a student shall be made:

(1) Only by those board or council members who have heard or read the evidence.

(2) Only by those board or council members who have not acted as a witness in the matter.

(3) Only at a meeting at which a quorum of the board or council is present and by majority vote.

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-400-320, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.160 and 1996 c 321. WSR 96-15-098, § 180-40-320, filed 7/22/96, effective 8/22/96; Order 6-77, § 180-40-320, filed 6/2/77, effective 8/1/77.]

WAC 392-400-325 Statewide definition of excused and unexcused daily absences.

Excused daily absences

The following are valid excuses for absences from school:

(1) Participation in a district or school approved activity or instructional program;

(2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry) for the student or person for who the student is legally responsible;

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(3) Family emergency including, but not limited to, a death or illness in the family;

(4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(5) Court, judicial proceeding, or serving on a jury;

(6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(7) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(8) Absence directly related to the student's homeless status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absence resulting from a disciplinary/corrective action (e.g., short-term or long-term suspension, emergency expulsion); and

(11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

Unexcused daily absences

Any absence from school is unexcused unless it meets one of the criteria above for an excused absence.

[Statutory Authority: RCW 28A.300.046. WSR 12-17-051, § 392-400-325, filed 8/9/12, effective 9/9/12.]

WAC 392-400-410 Appeal for extension of an expulsion. When warranted because of risk to the public health and safety, the principal or the principal's designee may petition the district's superintendent for authorization to exceed the academic term limitation on an expulsion. The superintendent may exercise his/her discretion to grant the petition in limited circumstances, on a case-by-case basis, so long as there is evidence that, if the student were to return at or before the length of an academic term, as defined by the school board, he/she would pose a risk to public health or safety.

(1) The petition to exceed the academic term limit shall include, at least, the following:

(a) A detailed description of the student's misconduct, the school rules which were violated, and the public health and/or safety concerns of the district;

(b) A detailed description of the student's academic, attendance, and discipline history, if any;

(c) A description of the lesser forms of corrective actions which were considered and reasons why those were rejected;

(d) A description of all alternative learning experiences, vocational programs, and/or other educational services which may be available to the student;

(e) The proposed extended length of the expulsion;

(f) Identification of special education services or accommodations pursuant to Section 504 of the Rehabilitation Act of 1973, if appropriate; and

(g) A proposed date for the reengagement meeting.

(2) Designated staff shall submit the petition at any time after final imposition of an academic term expulsion and prior to the end of that expulsion.

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(3) A copy of the petition shall be delivered in person or by certified mail to the student and his/her parent(s)/guardian(s).

(4) The petition shall be provided in the predominant language of the student and/or parent(s)/guardian(s) who speak a language, other than English, in accordance with Title VI of the Civil Rights Act of 1964.

(5) The student and/or parent(s)/guardian(s) may submit a written or verbal response to the petition within ten school business days of the recorded receipt of the petition.

(6) Within eleven school business days, but no later than twenty school business days of the date of the petition's recorded delivery to the student/parent(s)/guardian(s), the district superintendent shall issue a written decision indicating whether the petition is granted or denied. The written decision shall also include a description of all rights and procedures for appeal.

(7) If the petition is granted, within ten school business days of the receipt of the decision, the student and/or parent(s)/guardian(s) may appeal the decision to the district's school board in accordance with WAC 392-400-310 and 392-400-315.

Annually, all school districts shall report the number of petitions submitted, approved and denied to the office of the superintendent of public instruction.

[Statutory Authority: RCW 28A.600.015, WSR 16-18-028, § 392-400-410, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-410, filed 7/23/14, effective 8/23/14.]

WAC 392-400-420 Reengagement meetings and plans. (1) School districts should make efforts to have suspended or expelled students return to an educational setting as soon as possible. School districts must convene a meeting with the student and the student's parents or guardians within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's reentry or enrollment, to discuss a plan to reengage the student in a school program. Families must have access to, provide meaningful input on, and have the opportunity to participate in a culturally sensitive and culturally responsive reengagement plan.

(2) In developing a reengagement plan, school districts should consider shortening the length of time that the student is suspended or expelled, other forms of corrective action, and supportive interventions that aid in the student's academic success and keep the student engaged and on track to graduate. School districts must create a reengagement plan tailored to the student's individual circumstances, including consideration of the incident that led to the student's long-term suspension or expulsion. The plan should aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion.

(3) Any reengagement meetings conducted by the school district involving the suspended or expelled student and his or her parents or guardians are not intended to replace a petition for readmission.

[Statutory Authority: RCW 28A.600.015, WSR 16-18-028, § 392-400-420, filed 8/26/16, effective 9/1/16; WSR 14-15-153, § 392-400-420, filed 7/23/14, effective 8/23/14.]