

WSR 25-03-052
PROPOSED RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND
[Filed January 10, 2025, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-117.

Title of Rule and Other Identifying Information: Student conduct code, chapter 72-120 WAC.

Hearing Location(s): On February 26, 2025, at 1:00 p.m., at the Administration Building, Board Room, 2214 E. 13th Street, Vancouver, WA 98661; or Zoom <https://wssb.zoom.us/j/89945201133>.

Date of Intended Adoption: February 26, 2025.

Submit Written Comments to: Janet Kurz, 2214 E. 13th Street, Vancouver, WA 98661, email Janet.Kurz@wssb.wa.gov, fax 360-737-2120, 360-947-3302, beginning January 22, 2025, at 8:00 a.m., by February 25, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Janet Kurz, phone 360-947-3302, fax 360-737-2120, email Janet.Kurz@wssb.wa.gov, by February 25, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the Washington state school for the blind's (agency) student conduct code, chapter 72-120 WAC, into compliance with a new final rule issued by the United States Department of Education pursuant to its authority under Title IX of the Education Amendments of 1972 (Title IX) and to update other provisions of the student conduct code to reflect current issues and needs of the school and its students. Additionally, rule changes are needed to update the student conduct code for consistency with the office of superintendent of public instruction's (OSPI) rules, chapter 392-400 WAC, regarding student discipline. These updates ensure that the code's prohibited conduct and procedures adequately protect the interests of the agency's community and the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: The agency must review its student conduct code, chapter 72-120 WAC, to meet new federal regulations for Title IX that specify how recipients of federal financial assistance covered by Title IX must respond to allegations of sexual discrimination consistent with Title IX's prohibition against sex discrimination. In addition, other revisions to the student conduct code are necessary to align with the current processes and changes in practice for student conduct. The changes ensure that the interests of the agency's community and procedural rights of students are adequately protected.

Statutory Authority for Adoption: RCW 34.05.010(16) and 72.40.022(15); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: RCW 72.40.022(15) and 28A.600.010 through 28.600.022; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Name of Proponent: Washington state school for the blind, governmental.

Name of Agency Personnel Responsible for Drafting: Shelley Williams, Assistant Attorney General, 1220 Main Street, Suite 510, Van-

couver, WA 98660, 360-619-4412; Implementation: Jennifer Langley, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3353; and Enforcement: Sean McCormick, 2214 E. 13th Street, Vancouver, WA 98661, 360-947-3308.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. Failure to comply with Title IX regulations could result in corrective action by the United States Department of Education, including possible loss of federal funding.

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts revisions to the agency's student conduct code, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply with changes in federal Title IX regulations, state statutes, and to ensure the protection of individual students' constitutional and procedural rights.

Scope of exemption for rule proposal:

Is fully exempt.

January 10, 2025
Scott McCallum
Superintendent

OTS-6054.2

AMENDATORY SECTION (Amending WSR 16-13-069, filed 6/13/16, effective 7/14/16)

WAC 72-120-001 Purpose ((and application)). ((The purpose of this chapter is to establish standards of conduct for students and prescribe the substantive and procedural due process rights of students at the school. The procedures and standards set forth in this chapter shall govern the imposition of discipline. "Discipline" means 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 the school. Discipline is considered part of the school's educational process. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate discipline will be administered on a less restrictive alternative basis including, but not limited to, time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, suspension or expulsion.)~~ WAC 392-400-010, the rule for purpose, is incorporated by reference.

NEW SECTION

WAC 72-120-002 Application. This chapter must be construed in a manner consistent with the following laws and rules:

- (1) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;
- (2) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;
- (3) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;
- (4) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act; and
- (5) RCW 28A.415.410, regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

NEW SECTION

WAC 72-120-005 Definitions. For the purposes of this student conduct code, the following definitions apply:

- (1) "Assistant principal" means the associate director of on-campus education, associate director of transition and residential, or designees.
- (2) "Behavioral violation" means a student's behavior that violates the school's student conduct code or discipline policies.
- (3) "Classroom exclusion" means the exclusion of a student from a classroom or instructional or activity area for a discretionary behavioral violation that creates a disruption of the educational process in violation of the school's disciplinary policies subject to the requirements in WAC 72-120-330 through 72-120-335.

(4) "Corrective action" means disciplinary and nondisciplinary actions taken by a certificated educator. Nondisciplinary actions include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.

(5) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(6) "Discretionary discipline" means a disciplinary action taken by the school for student behavior that violates rules of student conduct adopted by the school under RCW 28A.600.015(6). Discretionary discipline does not include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.

(7) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

(8) "Emergency removal" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process, subject to the requirements in WAC 72-120-510 through 72-120-530.

(9) "Expulsion" means a denial of admission to the Washington state school for the blind in response to a behavioral violation, subject to the requirements in WAC 72-120-430 through 72-120-475.

(10) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school.

(11) "Nondiscretionary discipline" means:

(a) Violations of RCW 28A.600.420;

(b) An offense listed in RCW 13.04.155;

(c) Two or more violations of RCW 9A.46.120, 9.41.280, 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. RCW 28A.600.015.

(12) "Parent" has the same meaning as in WAC 392-172A-01125.

(13) "Principal" means the school's director of on-campus education or designee.

(14) "School" means the Washington state school for the blind.

(15) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the school is open to the public for business.

(16) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(17) "Superintendent" means the superintendent of the Washington state school for the blind or designee.

(18) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any expulsions or emergency removals.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to 10 consecutive school days, subject to the requirements in WAC 72-120-430 through 72-120-470.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than 10 consecutive school days, subject to the requirements in WAC 72-120-430 through 72-120-470.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to 10 consecutive school days, subject to the requirements in WAC 72-120-430 through 72-120-470.

AMENDATORY SECTION (Amending WSR 24-16-108, filed 8/5/24, effective 9/5/24)

WAC 72-120-110 (~~(Prohibited student conduct.)~~) **Behavioral violations.** Having sought the participation of school personnel, students, parents, families, and the community, the school has developed definitions for the following behavioral violations, which state the types of behaviors for which discipline - including classroom exclusion, suspension, and expulsion - may be administered:

The school may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, (~~(an act(s) of misconduct)~~) behavioral violations set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means.

(1) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(2) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of school property or the property of another person; including possession of such property or money after it has been stolen. Property for purposes of this subsection includes computer passwords, access codes, identification cards, other confidential personal information, and intellectual property.

(3) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the school's educational

programs/activities or that creates an intimidating, hostile, or offensive educational environment.

Sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, sexual coercion, sexual exploitation, or gender- or sex-based stalking. A person may be incapable of giving consent because they are underage, unable to understand what is happening, or (~~is~~) are disoriented, helpless, asleep or unconscious for any reason, including due to drug or alcohol consumption, (~~is~~) are disabled, or cannot consent because of threat or intimidation.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, administrative, or other functions, procedures, services, programs, or activities of the school. The term includes disorderly conduct, breach of the peace, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, or interfering with the orderly conduct of school investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Failure to comply.** Refusal or failure to comply with instructions or directions of school officials, refusing to comply with any term or condition of a disciplinary sanction.

(6) **Safety violations.** Any nonaccidental conduct that interferes with or otherwise compromises any school policy, equipment, or procedure relating to the safety and security of the (~~center and~~) school community, including tampering with or disabling safety equipment and triggering false alarms or other emergency response systems.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of school records, furnishing false or misleading information, or falsely accusing any person of misconduct.

(8) **Academic dishonesty.** All forms of cheating, plagiarism and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment. This includes assisting another to commit an act of academic dishonesty or allowing someone to do these things for one's benefit.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings or work of another person in completing an academic assignment. Prohibited conduct may

also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to a teacher concerning the completion of an assignment.

(9) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the school or the property of another person, including any computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(10) **Alcohol, drug and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, or being visibly under the influence of any alcoholic beverages.

(b) **Marijuana.** Use, possession, delivery, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form.

(c) **Drug.** Use, possession, distribution, delivery, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** Smoking or use of tobacco, tobacco products, electronic smoking devices, or other smoking devices.

(11) **Retaliation.** Harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other school policies, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(12) **Weapons violations.** A "weapons violation" includes possessing, carrying, displaying, exhibiting, or storing any firearm or dangerous weapon. Dangerous weapons include, but are not limited to, firearms, dangerous chemicals, explosives, (~~slung~~) sling shots, sand clubs, metal knuckles, daggers, dirks, spring blade knives, nunchaku sticks, throwing stars, air guns, stun guns, and devices used or intended to be used as a weapon to injure a person by an electric shock, charge, or impulse.

(13) **Harassment, intimidation or bullying.** Harassment, intimidation or bullying means any intentional electronic, written, verbal or physical act including, but not limited to, one shown to be motivated by race, color, religion, ancestry, national origin, gender, sexual orientation including gender identity or expression, mental or physical disability, socio-economic status, physical appearance, or other distinguishing characteristic, when the act:

(a) Physically harms a student or damages the student's property;

(b) Has the effect of substantially interfering with a student's education;

(c) Is so severe, persistent or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

"Intentional act" refers to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

(14) **Gang activity.** Claiming membership in, association with, affiliation with, or participation in a gang, in gang-related activities or similar destructive or illegal group behavior at school, during school-related functions, or on any school property. "Gang" has the meaning given the term under RCW 28A.600.455.

(15) **Theft or misuse of electronic resources.** Theft or misuse of computer time or other electronic information resources of the school. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person;

(g) Use of such time or resources to interfere with normal operation of the school's computing system or other electronic information resources;

(h) Use of such time or resources in violation of applicable copyright or other law;

(i) Failure to comply with the student computing resources policy.

(16) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(17) **Violation of other laws or policies.** Violation of any federal, state, local law, rule, or regulation or other school rules or policies which are published annually in the student/parent handbook.

AMENDATORY SECTION (Amending WSR 16-13-069, filed 6/13/16, effective 7/14/16)

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.:~~) The school will not administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements, 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 superintendent of public instruction in WAC 392-400-235(2) as now or hereafter amended, is prohibited.~~) The school will not suspend the provision of educational services to a student in response to behavioral violations.

(3) The school will not administer any discipline in a manner that would result in the denial or delay of a nutritionally adequate meal to the student.

NEW SECTION

WAC 72-120-211 Staff authority to impose discipline. (1) In accordance with this chapter and school policy, staff will administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible.

(2) The superintendent has general authority to administer discipline, including all exclusionary discipline.

(3) The superintendent designates disciplinary authority to impose:

(a) In-school suspension and short-term suspension to the assistant principals and principal;

(b) Long-term suspension to the assistant principals and principal;

(c) Expulsion to the assistant principals and principal; and

(d) Emergency removal to the assistant principals and principal.

(4) The superintendent authorizes the assistant principals and principal to administer discretionary or nondiscretionary discipline that excludes a student from transportation services or extracurricular activities or impose detention.

(a) The school will not exclude a student from transportation services without providing access to alternative transportation the student needs to participate fully in educational services.

(b) Authorized staff may administer lunch or afterschool detention for not more than 60 minutes on any given day.

(c) Before assigning detention, the staff member will inform the student of the specific behavioral violation prompting their decision to administer detention and provide the student with an opportunity to share their perspective and explanation regarding the behavioral violation.

(d) At least one staff member will directly supervise students during the direction of any detention.

(e) Students and parents may challenge the administration of discretionary and nondiscretionary discipline other than suspensions, expulsions, and emergency removals, including discipline that excludes a

student from transportation or extracurricular activity, using the school's grievance procedures under WAC 72-120-215.

NEW SECTION

WAC 72-120-215 Grievance procedures. (1) Any parent or student who is aggrieved by the administration of discretionary and nondiscretionary discipline other than suspensions, expulsions, and emergency removals, including discipline that excludes a student from transportation or extracurricular activity, may request an informal conference with the principal for resolving the grievance.

(2) At the informal conference, the student and parent will have the opportunity to voice issues and concerns related to the grievance. The principal will have opportunity to address issues and questions raised and to ask questions of the parent or student.

CLASSROOM EXCLUSIONS

NEW SECTION

WAC 72-120-330 Classroom exclusions—Conditions and limitations.

(1) **Authority to administer classroom and instructional or activity area exclusions.** Discretionary discipline leading to a classroom exclusion gives the highest consideration to the judgment of qualified certificated educators regarding the conditions necessary to maintain the optimum learning experience.

(2) A teacher may exclude a student from the teacher's individual classroom and instructional or activity area while the student is under the teacher's immediate supervision, subject to the requirements in WAC 392-400-110. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action. A classroom exclusion does not include actions that result in missed instruction for a brief duration when:

(a) A teacher or other school personnel uses evidence-based classroom management practices outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations; and

(b) The student remains under the supervision of the teacher or other school personnel during such brief duration.

(3) **Duration of classroom exclusion.**

(a) A classroom exclusion may be administered for all or any portion of the balance of the school day, or up to the following two school days, or until the principal and teacher have conferred, whichever occurs first.

(b) A classroom exclusion that exceeds this time period, and if such students have repeatedly disrupted the learning of other stu-

dents, may be considered a suspension in accordance with this chapter and must provide for the early involvement of parents in attempts to improve the student's behavior.

(4) All staff will work cooperatively toward consistent enforcement of proper student behavior throughout the school, as well as within each classroom.

(5) **Assignments and tests.** The school must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

NEW SECTION

WAC 72-120-335 Classroom exclusion—Notice and procedure. Following a classroom exclusion under WAC 72-120-330:

(1) The teacher must communicate and collaborate with students, families, and all educational stakeholders in an ethical and professional manner to promote student learning. WAC 392-400-110.

(2) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal as soon as reasonably possible.

(3) **Notice to parents.** The teacher or principal must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(4) **Emergency circumstances.** When a teacher administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

(a) The teacher or other school personnel must immediately notify an assistant principal; and

(b) An assistant principal must meet with the student as soon as reasonably possible and administer appropriate discipline.

SUSPENSIONS AND EXPULSIONS

NEW SECTION

WAC 72-120-430 Suspensions and expulsions—General conditions and limitations. WAC 392-400-430, the rule for suspensions and expulsions, general conditions and limitations, is incorporated by reference.

NEW SECTION

WAC 72-120-435 Short-term and in-school suspensions—Additional conditions and limitations. WAC 392-400-435, the rule for short-term and in-school suspensions, additional conditions and limitations, is incorporated by reference.

NEW SECTION

WAC 72-120-440 Long-term suspensions—Additional conditions and limitations. WAC 392-400-440, the rule for long-term suspensions - additional conditions and limitations, is incorporated by reference.

NEW SECTION

WAC 72-120-445 Expulsions—Additional conditions and limitations. WAC 392-400-445, the rule for expulsions - additional conditions and limitations, is incorporated by reference.

NEW SECTION

WAC 72-120-450 Suspensions and expulsions—Initial hearing with student. WAC 392-400-450, the rule for suspensions and expulsions - initial hearing with student, is incorporated by reference.

NEW SECTION

WAC 72-120-455 Suspensions and expulsions—Notice to student and parents. WAC 392-400-455, the rule for suspensions and expulsions - notice to student and parents, is incorporated by reference.

NEW SECTION

WAC 72-120-460 Suspensions and expulsions—Optional conference with principal. WAC 392-400-460, the rule for suspensions and expulsions - optional conference with principal, is incorporated by reference.

NEW SECTION

WAC 72-120-465 Suspensions and expulsions—Appeal. (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school's principal orally or in writing.

(2) **Time limit.** A request for an appeal should be submitted within 21 calendar days from the date the school provides written notice under WAC 72-400-455.

(3) **Short-term and in-school suspensions.**

(a) **Appeal.** The principal must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The principal must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written appeal decision is an initial order. The initial order must include:

- (i) The decision to affirm, reverse, or modify the suspension;
- (ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;
- (iii) The educational services the school will offer to the student during the suspension under WAC 72-120-610; and
- (iv) Notice of the student's and parents' right to request review and reconsideration of the initial decision under WAC 72-120-470, including where and to whom to make the request. If no request for review is filed within 21 calendar days of service of the initial order, the initial order shall be deemed the final order.

(4) **Long-term suspensions and expulsions.**

(a) Student disciplinary proceedings under this section shall be governed by the Administrative Procedure Act, chapter 34.05 RCW and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(b) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the principal must provide the student and parents written notice in person, by mail, or by email of:

- (i) The time, date, and location of the appeal hearing;
- (ii) The name(s) of the official(s) presiding over the appeal;
- (iii) The student's and parents' rights to inspect the student's education records under (f) of this subsection;
- (iv) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (f) of this subsection;
- (v) The student's and parents' rights under (g) of this subsection; and
- (vi) Whether the school will offer to hold a reengagement meeting under WAC 72-120-710 before the appeal hearing.

(c) **Reengagement.** Before the appeal hearing, the student, parents, and school may agree to hold a reengagement meeting and develop a reengagement plan under WAC 72-120-710. The student, parents, and school may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(d) **Appeal hearing.** The school must hold an appeal hearing within three school business days from the date the superintendent received the appeal request, unless otherwise agreed to by the student or parents.

(e) **Presiding officials.** The principal will serve as the presiding official to hear and decide appeals for long-term suspensions and expulsions under this section. The presiding official(s) may not have been involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules

in this chapter, chapters 392-400 and 72-108 WAC, and of the school's discipline policies.

(f) **Evidence and witnesses.**

(i) Upon request, the student, parents, and school may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The school must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the school establishes that:

(A) The school made a reasonable effort to produce the witness; and

(B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(g) **Student and parents rights.** During the appeal hearing, the student and parents have the right to:

(i) Be represented by legal counsel;

(ii) Question witnesses;

(iii) Share the student's perspective and provide explanation regarding the behavioral violation; and

(iv) Introduce relevant documentary, physical, or testimonial evidence.

(h) **Recording of hearing.** The appeal hearing must be recorded by analog, digital, or other type of recording device. The school must provide the recording to the student or parents upon request.

(i) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:

(i) The findings of fact;

(ii) A determination whether:

(A) The student's behavior violated the school's student code of conduct, chapter 72-120 WAC;

(B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and

(C) The suspension or expulsion is affirmed, reversed, or modified;

(iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 72-120-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 72-120-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.

(5) **Language assistance.** The school must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for student

and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(6) **Pending appeal.** If the student or parents request an appeal under this section, the school may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:

(a) The school may temporarily continue to administer the suspension or expulsion for no more than 10 consecutive school days from the initial hearing under WAC 72-120-450 or until the appeal is decided, whichever is earlier;

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

(c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school must provide the student with an opportunity to make up assignments and tests missed during the suspension or expulsion upon the student's return.

NEW SECTION

WAC 72-120-470 Suspensions and expulsions—Review and reconsideration. (1) **Requesting review.** For the purposes of this section, "reviewing officer" means the superintendent who reviews and reconsiders the school's appeal decision under WAC 72-120-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A request for a review of a short-term suspension, in-school suspension, long-term suspension, or expulsion should be submitted within 21 calendar days from the date the school provides written notice under WAC 72-120-465.

(3) **Review procedure.**

(a) In reviewing the school's decision, the reviewing officer must consider all documentary and physical evidence related to the behavioral violation, any records from the appeal under WAC 72-120-465, relevant state law, and the school's student conduct code under this chapter.

(b) The reviewing officer may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the reviewing officer must be made only if the reviewing officer was not involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 72-120-465.

(4) **Decision.** The reviewing officer must provide a written decision to the student and parents in person, by mail, or by email within 10 school business days after receiving the request for review and reconsideration. The written decision must state:

(a) Whether the reviewing officer affirms, reverses, or modifies the suspension or expulsion;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension and expulsion will begin and end;

(c) For long-term suspensions or expulsions, notice of the opportunity to participate in a reengagement meeting under WAC 72-120-710; and

(d) A notice that the reviewing officer's decision shall be final and shall include a notice of any rights to request reconsideration or judicial review. A request for review may be deemed to have been denied if the reviewing officer does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) **Language assistance.** The school must ensure that any review proceedings and decisions are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 72-120-475 Petition to extend expulsion. (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, an assistant principal may petition the school's principal for authorization to exceed the academic term limitation on an expulsion. The petition must inform the principal of:

(a) The behavioral violation that resulted in the expulsion and the public health or safety concerns;

(b) The student's academic, attendance, and discipline history;

(c) Any nonacademic supports and behavioral services the student was offered or received during the expulsion;

(d) The student's academic progress during the expulsion and the educational services available to the student during the expulsion;

(e) The proposed length of the expulsion; and

(f) The student's reengagement plan.

(2) **Time limit.** An assistant principal may petition to extend an expulsion only after the development of a reengagement plan under WAC 72-120-710 and before the end of the expulsion. For violations of WAC 72-120-820, an assistant principal may petition to extend an expulsion at any time.

(3) **Notice.** The school must provide written notice of the petition to the student and parents in person, by mail, or by email within one school business day from the date the principal received the petition. The written notice must include:

(a) A copy of the petition;

(b) The student's and parents' right to an informal conference with the principal to be held within five school business days from the date the school provided written notice to the student and parents; and

(c) The student's and parents' right to respond to the petition orally or in writing to the superintendent within five school business days from the date the school provided written notice.

(4) **Written decision.** The principal may grant the petition only if there is substantial evidence that, if the student were to return to the school after the length of an academic term, the student would pose a risk to public health or safety. The principal must deliver a written decision to the petitioning assistant principal, the student, and the student's parents in person, by mail, or by email within 10 school business days after receiving the petition.

(a) If the petition is granted, the written decision must include:

(i) The date on which the extended expulsion will end;

(ii) The reason that, if the student were to return before the initial expulsion end date, the student would pose a risk to public health or safety; and

(iii) Notice of the student's or parents' right to request review and reconsideration of the appeal decision under subsection (5) of this section, including where and to whom to make the request.

(b) If the petition is not granted, the written decision must identify the date on which the expulsion will end.

(5) **Review and reconsideration.**

(a) **Requesting review.** The student or parents may request that a reviewing officer review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing. For the purposes of this section, the reviewing officer is the superintendent.

(b) **Time limit.** A request for a review should be submitted within 21 calendar days from the date the school provides the written decision under subsection (4) of this section.

(c) **Review procedure.**

(i) The reviewing officer may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The reviewing officer may not have been involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 72-120-465.

(d) **Decision.** The reviewing officer must provide a written decision to the student and parents in person, by mail, or by email within 10 school business days after receiving the request for review and reconsideration. The written decision must state:

(i) Whether the reviewing officer affirms, reverses, or modifies the decision to extend the student's expulsion;

(ii) The date on which the extended expulsion will end; and

(iii) A notice that judicial review may be available. A request for review may be deemed to have been denied if the reviewing officer does not make a disposition of the matter within 20 calendar days after the request is submitted.

(6) **Duration.** Any extension of an expulsion may not exceed the length of an academic term.

(7) **Language assistance.** The school must ensure that any petition proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for student and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(8) **Annual reporting.** The school must annually report the number of petitions approved and denied to the office of superintendent of public instruction.

EMERGENCY REMOVALNEW SECTION**WAC 72-120-510 Emergency removal—Conditions and limitations.**

WAC 392-400-510, the rule for emergency removal - conditions and limitations, is incorporated by reference.

NEW SECTION**WAC 72-120-515 Emergency removal—Notice to student and parents.**

WAC 392-400-515, the rule for emergency removals - notice to student and parents, is incorporated by reference.

NEW SECTION

WAC 72-120-520 Emergency removal—Optional conference with principal. WAC 392-400-520, the rule for emergency removals - optional conference with principal, is incorporated by reference.

NEW SECTION

WAC 72-120-525 Emergency removal—Appeal. (1) **Requesting an appeal.** A student or the parents may appeal an emergency removal to the principal orally or in writing.

(2) **Time limit.** A request to appeal an emergency removal should be submitted within 21 calendar days from the date the school provides the written notice of the emergency removal.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the principal must provide the student and parents written notice in person, by mail, or by email of:

- (a) The time, date, and location of the appeal hearing;
- (b) The name(s) of the official(s) presiding over the appeal;
- (c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;
- (d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and
- (e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school must hold an appeal hearing as soon as reasonably possible, but no later than two school business

days after the date the principal received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s)**. The superintendent designates the principal to decide appeals under this section. The principal may not have been involved in the student's behavioral violation or decision to emergency remove the student and must be knowledgeable about the rules in this chapter, chapter 392-400 WAC, and the school's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the school establishes that:

(i) The school made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;

(c) Share the student's perspective and provide explanation regarding the events that led to the emergency removal; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by analog, digital, or other type of recording device. The school must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process;

(c) Whether the school will end the emergency removal or convert the emergency removal to a suspension or expulsion. If the school converts the emergency removal to a suspension or expulsion, the school must provide the student and parents notice and due process under WAC 72-120-430 through 72-120-470; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 72-120-530, including where and to whom to make the request.

(10) **Language assistance.** The school must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 72-120-530 Emergency removal—Review and reconsideration.

(1) **Requesting review.** The student or parents may request that the superintendent review and reconsider the school's appeal decision under WAC 72-120-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A request for review under this section should be submitted within 21 calendar days from the date the school provided the written appeal decision to the student and parents under WAC 72-120-525.

(3) **Review procedure.**

(a) In reviewing the school's decision, the superintendent must consider all documentary and physical evidence related to the events that led to the emergency removal, any records from the appeal under WAC 72-120-525, relevant state law, and the school's discipline policy and procedures.

(b) The superintendent may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather information.

(c) The superintendent must not have been involved in the events that led to the emergency removal, the decision to emergency remove the student, or the appeal decision under WAC 72-120-525.

(4) **Decision.** The superintendent must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must state:

(a) Whether the superintendent affirms or reverses the school's decision that the student's presence posed:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process;

(b) If the emergency removal has not yet ended or been converted, whether the school will end the emergency removal or convert the emergency removal to a suspension or expulsion. If the school converts the emergency removal to a suspension or expulsion, the school must provide the student and parents notice and due process under WAC 72-120-430 through 72-120-470; and

(c) A notice that judicial review may be available.

(5) **Language assistance.** The school must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

EDUCATIONAL SERVICESNEW SECTION

WAC 72-120-610 Educational services during suspension, expulsion, or emergency removal. WAC 392-400-610, the rule for educational services during suspension, expulsion, or emergency expulsion, is incorporated by reference.

REENGAGEMENTNEW SECTION

WAC 72-120-710 Student reengagement after long-term suspension or expulsion. WAC 392-400-710, the rule for student reengagement after long-term suspension or expulsion, is incorporated by reference.

ADDITIONAL DUE PROCESS PROTECTIONSNEW SECTION

WAC 72-120-810 Exceptions for the purpose of protecting victims. WAC 392-400-810, the rule for exceptions for the purpose of protecting victims, is incorporated by reference.

NEW SECTION

WAC 72-120-815 Behavior agreements. (1) **Authorization.** The school authorizes the assistant principals or principal to enter into behavior agreements with students and parents in response to behavioral violations.

(2) **General.** Behavior agreements include agreements to reduce the length of a suspension conditioned on the participation in treatment

services, agreements in lieu of suspension or expulsion, or agreements holding a suspension or expulsion in abeyance. Behavior agreements will describe the school's actions planned to support students in meeting behavioral expectations. Behavior agreements may be supplemental to but will not replace best practices and strategies implemented at the classroom level to support students in meeting behavioral expectations.

(3) Behavior agreements entered into with students and parents under this section may not replace or negate provisions within a student's Individual Education Plan (IEP), 504 Plan, or Behavioral Intervention Plan (BIP).

(4) **Reengagement meetings and educational services.** A behavior agreement does not waive a student's opportunity to participate in a reengagement meeting under WAC 72-120-710, or receive educational services as provided under WAC 72-120-610.

(5) **Duration.** The duration of behavior agreements must not exceed the length of an academic term.

(6) **Subsequent behavioral violation.** Nothing in this section precludes the school from administering discipline for behavioral violations that occur after the school enters into an agreement with the student and parents.

(7) **Language assistance.** The school will ensure that any behavior agreement under this section is provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 72-120-820 Firearm exceptions. WAC 392-400-820, the rule for firearm exceptions, is incorporated by reference.

NEW SECTION

WAC 72-120-825 Corporal punishment, restraint, and isolation. WAC 392-400-825, the rule for corporal punishment, restraint, and isolation, is incorporated by reference.

SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

NEW SECTION

WAC 72-120-900 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence. This supplemental student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental procedures conflict with the Washington state school for the blind's standard disciplinary procedures, WAC 72-120-001 through 72-120-825, or any provisions set forth in student handbooks, and other school or school policies and procedures, these supplemental procedures will take precedence.

NEW SECTION

WAC 72-120-905 Prohibited conduct under Title IX. (1) Pursuant to chapter 392-400 WAC and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Washington state school for the blind may impose disciplinary sanctions up to and including expulsion against a student who has been found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit or engage in acts of sex discrimination, which include sex-based harassment.

(2) For the purposes of this supplemental procedure, the following conduct is prohibited:

- (a) Sex discrimination;
- (b) Sex-based harassment;
- (c) Sexual violence;
- (d) Stalking; and
- (e) Retaliation.

NEW SECTION

WAC 72-120-910 Definitions. For the purposes of this supplemental procedure, the following definitions apply:

(1) "Complainant" means:

(a) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or

(b) A person other than a student who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the school's education program or activity at the time of the alleged discrimination under Title IX or its regulations.

(2) "Complaint" means a written or oral request that can be objectively understood as a request for the school to investigate and make a determination about alleged sex discrimination.

(3) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(a) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(b) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(c) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(d) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(4) "Decision maker" means the school's principal or designee.

(5) "Disciplinary sanctions" means consequences imposed on a respondent following a determination that the respondent violated the school's policy prohibiting sex discrimination or the school's conduct code.

(6) "Impermissible evidence" means privileged communications, unless the privilege has been effectively waived by the holder, and irrelevant evidence about a complainant's prior sexual behavior.

(a) Privileged communications include:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privileges;

(iii) Privileges applicable to members of the clergy and priests;

(iv) Privileges applicable to medical providers, mental health therapists, and counselors;

(v) Privileges applicable to sexual assault and domestic violence advocates; or

(vi) Other legal privileges identified in RCW 5.60.060.

(b) Prior sexual behavior. Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such questions or evidence:

(i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(7) "Investigation procedure" is the process the school uses to initiate, informally resolve, and/or investigate allegations that a student has violated school policies prohibiting sex discrimination or sex-based harassment.

(8) "Party" means a complainant or respondent.

(9) "Peer retaliation" means retaliation by a student against another student.

(10) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(11) "Principal" means the school's director of on-campus education or designee.

(12) "Program" or "programs and activities" means all operations of the school.

(13) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evi-

dence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(14) "Remedies" means appropriate measures provided after the school determines that sex discrimination occurred to restore or preserve a complainant or any other person's equal access to the school's education program or activity.

(15) "Respondent" means a student who is alleged to have violated the student conduct code.

(16) "Retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(17) "School" means the Washington state school for the blind.

(18) "Sex discrimination" occurs when a respondent causes a complainant more than de minimis (insignificant) harm by treating the complainant differently from other similarly situated individual(s) based on:

- (a) Sex stereotypes;
- (b) Sex characteristics;
- (c) Pregnancy or related conditions;
- (d) Sexual orientation; or

(e) Gender identity. Conduct that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(19) "Sex-based harassment." For purposes of this supplemental procedure, sex-based harassment is a type of sex discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. An employee, agent, or other person authorized by the school to provide an aid, benefit, or service under the school's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the school's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the school's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the school's education program or activity.

(c) Sexual violence. Sexual violence includes the following conduct:

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact (fondling). Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(iv) Statutory rape (rape of a child). Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(d) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(20) "Superintendent" means the superintendent of the Washington state school for the blind or designee.

(21) "Supportive measures" means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to:

(a) Restore or preserve that party's access to the school's education program or activity, including measures that are designed to protect the safety of the parties or the school's educational environment; or

(b) Provide support during the school's grievance procedures or during an informal resolution process.

(22) "Title IX coordinator" is the administrator or designee responsible for processing Title IX complaints and conducting or overseeing formal investigations and coordinating supportive measures in accordance with school policy.

NEW SECTION

WAC 72-120-915 Jurisdiction. This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 72-120-910 and occurs:

- (1) On school premises;
- (2) At or in connection with school programs or activities; or
- (3) Off school premises, if in the judgment of the school, the conduct has an adverse impact on the school's community, the pursuit of its objectives, or the ability of a student or school personnel to participate in the school's education programs and activities.

NEW SECTION

WAC 72-120-920 Rights of parties. The provisions of these supplemental procedures shall apply equally to the respondent and the complainant.

The school bears the burden of offering and presenting sufficient evidence to establish that the respondent is responsible for engaging in sex discrimination, sex-based harassment, or retaliation related to or arising from such allegations by a preponderance of the evidence.

The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

NEW SECTION

WAC 72-120-925 Emergency removal for alleged sex-based harassment under Title IX. The school may remove a respondent on an emergency basis consistent with WAC 72-120-510 through 72-120-530 provided that the school:

- (1) Undertakes an individualized safety and risk analysis;
- (2) Determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal; and
- (3) Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

NEW SECTION

WAC 72-120-930 Initiation of discipline. (1) The school's Title IX coordinator shall review, process, and, if applicable, investigate

the complaint or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(2) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student disciplinary matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(3) When emergency removal or other restriction proceedings are conducted under WAC 72-120-925, the complainant shall be notified that an emergency removal has been imposed on the same day that the emergency removal notice is served on the respondent. The school will also provide the complainant with timely notice of any subsequent changes to the emergency removal order.

NEW SECTION

WAC 72-120-935 Notice of investigative report. (1) At least 15 calendar days prior to a determination regarding responsibility, the school shall provide the parties with a report that provides equal written notice as to the findings of the investigation and provides a fair summary of any relevant evidence that is directly related to the allegations raised in the complaint and obtained as part of the investigation.

(2) The notice of investigative report will state that:

(a) The report findings will be provided to the decision maker;

(b) The parties have been given an accurate description of the evidence and, upon request, they have an equal opportunity to inspect and review relevant and not otherwise impermissible evidence;

(c) The parties have 10 calendar days from receipt of the notice to review the description of the evidence, request to review the evidence, and submit a written response for the decision maker to consider before making a decision;

(d) The parties have an equal opportunity to ask specific, relevant questions about the evidence or identify areas where they believe further investigation is necessary;

(e) Any questions or evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless it is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or unless it concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.

NEW SECTION

WAC 72-120-940 Determination. (1) Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the decision maker:

(a) May question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This process involves:

- (i) The decision maker will request the party or witness to attend an interview;
 - (ii) During the interview, the decision maker may ask questions that do not seek irrelevant or impermissible evidence;
 - (b) Will use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decision maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decision maker is not persuaded under this standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex discrimination occurred;
 - (c) Will notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal;
 - (d) Will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination;
 - (e) Will comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
 - (f) Will not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.
- (2) If there is a determination that sex discrimination occurred, the Title IX coordinator will, as appropriate:
- (a) Coordinate the provision and implementation of remedies to a complainant and other people the school identifies as having had equal access to the school's education program or activity limited or denied by sex discrimination;
 - (b) Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - (c) Take other appropriate prompt and effective steps to ensure that sex discrimination does not recur within the school's education program or activity.

NEW SECTION

- WAC 72-120-945 Dismissal.** (1) The decision maker may recommend dismissal of the complaint if:
- (a) The school is unable to identify the respondent after taking reasonable steps to do so;
 - (b) The respondent is not participating in the school's education programs or activities;
 - (c) The complainant has provided voluntary, written notice that withdraws any or all of the allegations in the complaint, the Title IX coordinator declines to open a complaint, and any allegations that were not withdrawn, even if proven, would not constitute sex discrimination under Title IX;
 - (d) The school determines the conduct in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the school will make reasonable efforts to clarify the allegations with the complainant;

(e) The school determines that the complaint lacks sufficient detail to objectively understand what sex-based discriminatory acts are alleged, and when or where they occurred. Before dismissing the complaint for lack of sufficient detail, the school will provide the complainant with notice, in writing, of what information is needed and that the school may dismiss the complaint if the information is not received within 21 calendar days; or

(f) The conduct alleged by the complainant falls outside the school's disciplinary jurisdiction.

(2) Notice of dismissal. Upon dismissal, the school will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the school will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

(3) Notice of right to appeal dismissal. The school will provide the complainant with notice of the opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the school will also notify the respondent that the dismissal may be appealed. Dismissal may be appealed on the following basis:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the dismissal was made; or

(c) The Title IX coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

(4) When a complaint is dismissed, the school will, at a minimum:

(a) Offer supportive measures to the complainant as appropriate;

(b) If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and

(c) Take other prompt and effective steps, as appropriate, through the Title IX coordinator to ensure that sex discrimination does not continue or recur within the school's education program or activity.

NEW SECTION

WAC 72-120-950 Disciplinary sanctions and remedies. (1) Following a determination that sex-based harassment occurred, the school may impose disciplinary sanctions. "Disciplinary sanctions" means consequences imposed on a respondent following a determination under WAC 72-120-940 that the respondent violated the school's prohibition on sex discrimination. The school will administer any disciplinary sanctions in accordance with this chapter.

(2) Any discipline imposed under this section is subject to the requirements in WAC 72-120-201 and 392-172A-05140 through 392-172A-05175.

(3) Following a determination that sex-based harassment occurred, the school may provide remedies. "Remedies" means measures provided, as appropriate, to a complainant or any other person the school identifies as having had their equal access to the school's education program or activity limited or denied by sex discrimination. These meas-

ures are provided to restore or preserve that person's access to the school's education program or activity. Remedies may include:

- (a) A continuation of supportive measures;
- (b) Referrals to counseling or health services;
- (c) Course and registration adjustments, such as retroactive withdrawals or changes in schedules;
- (d) Provision of school safety escorts;
- (e) Implementation of long-term contact limitations between the parties; or
- (f) Implementation of adjustments to academic deadlines or course schedules.

NEW SECTION

WAC 72-120-955 Appeals—Dismissal. (1) Any party may appeal a dismissal under WAC 72-120-945 by submitting a notice of appeal to the superintendent within 21 calendar days following the date upon which the party received the notice of dismissal.

(2) If the dismissal is appealed, the school will:

- (a) Notify the parties of any appeal, including notice of the allegations, if the notice was not previously provided to the respondent;
- (b) Implement appeal procedures equally for the parties;
- (c) Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- (d) Ensure that the decision maker for the appeal has been trained consistent with the Title IX regulations;
- (e) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- (f) Notify the parties of the result of the appeal and the rationale for the result within 20 calendar days after filing notice of appeal.

NEW SECTION

WAC 72-120-960 Appeals—Determination of responsibility. (1) If a party disagrees with the decision maker's written determination of responsibility, the disagreeing party may appeal the determination by filing a written notice of appeal with the superintendent within 21 calendar days following the date upon which the party received the determination.

(2) Notice of appeal and hearing. The school will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed. The superintendent will schedule a hearing to commence by the 20th calendar day following the filing of the written notice of appeal.

(3) Appeal decision maker. The superintendent will serve as the appeal decision maker. The appeal decision maker must be an individual who is impartial and does not have any conflicts or bias for any of the parties. The appeal decision maker must be trained consistent with the requirements of Title IX. The school will ensure that the decision

maker for the appeal is not the same decision maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator.

(4) Appeal hearing. The hearing will commence by the 20th calendar day following the filing of the written notice of appeal. Both parties will be allowed a reasonable, equal opportunity to present such witnesses and testimony as the decision maker, on appeal, deems relevant and material in support of or challenging the outcome of the initial determination.

(5) The decision maker, on appeal, will render a written decision within 20 calendar days following the filing of the notice of appeal and provide the parties with a copy of the decision. The written decision will describe the result of the appeal and the rationale for the result. The decision will be provided in a language the parties can understand, which may require language assistance for complainants with limited-English proficiency in accordance with Title VI of the Civil Rights Act.

NEW SECTION

WAC 72-120-965 Appeals or reviews—Imposition of discipline.

(1) If a party disagrees with the decision maker's imposition of discipline, the disagreeing party may appeal or seek review of the discipline under WAC 72-120-465, 72-120-470, or 72-120-475, as applicable.

(2) The school will implement appeal procedures equally for both parties and provide written notice to the other party when an appeal is filed.

(3) Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the decision maker's imposition of discipline.

NEW SECTION

WAC 72-120-970 Extension of time frames. The time frames in these supplemental procedures may be extended on a case-by-case basis for good cause and with notice to the parties that includes the reason for the delay.

(1) The Title IX coordinator, decision maker, or superintendent, may send written notice to the parties stating the extension of the time frame for a major stage and the reason for the extension; or

(2) A party may submit a written request to the Title IX coordinator asking for an extension of the time frame for a major stage and the reason for requesting the extension.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 72-120-315 Emergency actions.