

**WSR 24-17-119  
EMERGENCY RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 19, 2024, 11:09 a.m., effective August 19, 2024, 11:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The office of superintendent of public instruction (OSPI) is adopting emergency rule making in the area of student discipline with revisions that are intended to: (1) Update statutory definitions of discipline that are in alignment with current law; (2) require school boards to establish policies for reporting and notification when classroom exclusions occur; (3) clarify the scope of authority for teachers when administering classroom exclusions; (4) make evident the standards and procedures that educators must follow to maintain an optimal learning environment for all students; (5) promote the involvement of families as integral partners in helping students to be successful; and (6) ensure manageable data and reporting requirements from each level of the system, where applicable (i.e., classroom, school, district, state, etc.). Adopting these rule updates before the beginning of the 2024-25 school year would allow these critical changes involving the health and safety of both students and educators to take effect immediately.

Citation of Rules Affected by this Order: Amending WAC 392-190-048, 392-400-010, 392-400-020, 392-400-025, 392-400-110, 392-400-330, 392-400-335, 392-400-510, 392-400-515, 392-400-520, 392-400-525, 392-400-530, 392-400-610, 392-401-020, and 392-401-040.

Statutory Authority for Adoption: RCW 28A.300.046, 28A.600.010, 28A.600.015, 28A.600.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The timing of the COVID-19 pandemic disrupted the planned comprehensive rollout of revised student discipline rules and professional development for educators at all levels of the K-12 education system. Unclear sections of the rules, coupled with new challenges in student behavior and mental health following the pandemic, require immediate intervention to preserve the K-12 instructional environment as students and educators return to the classroom this fall. OSPI is also replacing the prejudicial term "emergency expulsion" with the term "emergency removal" in the context of student discipline in compliance with legislative mandates under RCW 28A.600.495.

OSPI will soon initiate permanent rule making concerning these clarifications.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 19, 2024.

Chris P. S. Reykdal  
State Superintendent of Public Instruction

### OTS-5253.1

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

**WAC 392-190-048 Access to course offerings—Student discipline and corrective action.** At least annually, each school district and public charter school must review data on corrective and disciplinary actions taken against students within each school disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. This review must include, but is not limited to, short-term suspensions, long-term suspensions, expulsions, and emergency (~~expulsions~~) removals. In reviewing this data, each school district or public charter school must determine whether it has disciplined or applied corrective action to a substantially disproportionate number of students within any of the categories identified in this section. If a school district or public charter school finds that it has disciplined or applied corrective action to a substantially disproportionate number of students who are members of one of the categories identified in this section, the school district or charter school must take prompt action to ensure that the disproportion is not the result of discrimination.

### OTS-5777.1

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-010 Purpose.** The purpose of this chapter is to ensure that school districts in Washington:

(1) Provide a safe and supportive learning environment for all students;

(2) Provide due process to students;

~~((2))~~ (3) Implement culturally responsive discretionary and nondiscretionary discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;

~~((3))~~ (4) Engage school personnel, students, parents, families, and the community in decisions related to the development and implementation of discretionary and nondiscretionary discipline policies and procedures;

~~((4))~~ (5) Ensure fairness and equity in the administration of discretionary and nondiscretionary discipline;

~~((5))~~ (6) Administer discretionary 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;

~~((6))~~ (7) Provide educational services that students need to complete their education without disruption; and

~~((7))~~ (8) Facilitate collaboration between school personnel, students, and families regarding nondiscretionary discipline to ensure successful reentry into the classroom following a suspension or expulsion(~~;~~ and

~~(8) Provide a safe and supportive learning environment for all students~~)).

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-020 Application.** (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

(a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) 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;

(d) 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

(e) (~~RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and~~

~~(f))~~ RCW 28A.415.410 (~~and 28A.415.420~~), regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-025 Definitions.** As used in this chapter the terms:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom (~~(or)~~) and instructional or activity area for a discretionary behavioral violation (~~(s, subject to the requirements in WAC 392-400-330 and 392-400-335. Classroom exclusion does not include actions that result in missed instruction for a brief duration when:~~

~~(a) A teacher or other school personnel attempts other forms of discipline 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)) that creates a disruption of the educational process in violation of the district disciplinary policies subject to the requirements in WAC 392-400-110.~~

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

(4) (~~"Discipline" means any action taken by a school district in response to behavioral violations.~~) "Discretionary discipline" means 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.600.015(6).

(5) "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.

(6) "Emergency (~~expulsion~~) 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 392-400-510 through 392-400-530.

(7) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

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

(9) (~~"Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~) "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.

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

(11) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the of-

office of the superintendent of a school district is open to the public for business.

(12) "School board" means the governing board of directors of a local school district.

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

(14) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including ~~((classroom exclusions,))~~ expulsions ~~((,))~~ or emergency ~~((expulsions))~~ 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 ~~((ten))~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ~~((ten))~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ~~((ten))~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution.** (1) **School district policies and procedures ~~((beginning in the 2019-20 school year))~~.** ~~((Before the commencement of the 2019-20 school year))~~ Pursuant to RCW 28A.600.010, a school district must adopt ~~((written policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with this chapter))~~ and make available to each pupil, teacher, and parent in the district reasonable written policies and procedures regarding pupil conduct, discipline, and rights, including, but not limited to, classroom exclusions, short-term suspensions, long-term suspensions, emergency removals, and expulsions. The policies and procedures must:

(a) Clearly state the types of behaviors for which discretionary and nondiscretionary discipline, including classroom exclusion, suspension, emergency removal, and expulsion, may be administered;

(b) 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 that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

(e) ~~((Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavio-~~

~~ral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;)~~ Ensure the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere as outlined in: RCW 28A.410.270, 28A.410.278, 28A.405.100, 28A.410.260, and 28A.415.443;

(f) Recognize that educators create an environment that welcomes all students and families, recognizing that the school belongs to them and the community. School faculty, staff, and administration highlight and center community expertise for learning partnerships. RCW 28A.410.260 and 28A.415.443;

(g) Identify school personnel with the authority to administer classroom exclusions, suspensions, expulsions, and emergency (~~expulsions, and other forms of discipline~~) removals;

~~((g))~~ (h) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency (~~expulsions~~) removals, consistent with WAC 392-400-430 through 392-400-530;

~~((h))~~ (i) Establish grievance procedures to address parents' or students' grievances related to the administration of (~~classroom exclusions and other forms of~~) discretionary and nondiscretionary discipline, including discipline that excludes a student from transportation or extra-curricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

~~((i))~~ (j) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

~~((j))~~ (k) Provide for reengagement meetings and plans, consistent with WAC 392-400-710;

~~((k))~~ (l) Provide a process for students who have been suspended or expelled to petition for readmission; and

~~((l))~~ (m) Be consistent with the model policy developed under RCW 28A.345.090.

(2) **Development and review.** A school district must develop and periodically review discretionary and nondiscretionary discipline policies and procedures with the participation of school personnel, students, parents, families, and the community. During the development and review of discretionary and nondiscretionary discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discretionary and nondiscretionary discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discretionary and nondiscretionary discipline policies and procedures available to families and the community. The school district must annually provide the district's discretionary and nondiscretionary discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discretionary and nondiscretionary discipline policies and procedures.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-330 Classroom and instructional or activity area exclusions—Conditions and limitations.** (1) **Authority to administer classroom and instructional or activity area exclusions.** Discretionary discipline leading to a classroom exclusion as determined by the school district's written procedures per RCW 28A.600.010 must give the highest consideration to the judgment of qualified certificated educators regarding the conditions necessary to maintain the optimum learning experience.

~~((a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.~~

~~(b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110 or 392-400-225, subject to the requirements in this section and WAC 392-400-335.~~

~~(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless 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. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(3) **Limitations on classroom exclusion.**~~

~~(a)) (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. 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 ((in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter)), or up to the following two days, or until the principal or designee and teacher have conferred, whichever occurs first.~~

~~(b) **(Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district pro-~~

~~vides notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.~~

~~(4)) A classroom exclusion that exceeds this time period, and if such students have repeatedly disrupted the learning of other students, may be considered a suspension in accordance with this chapter and must provide for early involvement of parents in attempts to improve the student's behavior.~~

~~(4) The procedures shall assure, pursuant to RCW 28A.400.110, that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school, as well as within each classroom.~~

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

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-335 Classroom exclusion—Notice and procedure.**

~~((Following a classroom exclusion under WAC 392-400-330:~~

~~(1) **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 or designee as soon as reasonably possible.~~

~~(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district 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.~~

~~(3) **Emergency circumstances.** When a teacher or school personnel 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 the principal or designee; and~~

~~(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.) School boards must ensure they have a policy that determines when a teacher or other school personnel shall report a classroom exclusion to a principal, principal designee, and parent. School district policies under this section must ensure:~~

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

~~(2) Regardless of how the notice is provided to the parents, guardians, or families (electronically, face-to-face), the school district must ensure that this notification is in a language that the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.~~



AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-510 Emergency ((expulsions)) removals—Conditions and limitations.** A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

- (1) **Sufficient cause.** The school district must have sufficient cause to believe that the student's presence poses:
  - (a) An immediate and continuing danger to other students or school personnel; or
  - (b) An immediate and continuing threat of material and substantial disruption of the educational process.
- (2) **Determination of immediate and continuing threat of disruption.** For purposes of this section, an immediate and continuing threat of material and substantial disruption of the educational process means:
  - ~~((a))~~ The student's behavior results in an extreme disruption of the educational process that creates a substantial barrier to learning for other students across the school day ~~((; and~~
  - ~~(b) School personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations)).~~
- (3) **Time limit.** An emergency ((~~expulsion~~)) removal may not exceed ~~((ten))~~ 10 consecutive school days. An emergency ((~~expulsion~~)) removal must end or be converted to another form of discipline within ~~((ten))~~ 10 school days from the start of the emergency ((~~expulsion~~)) removal.
- (4) **Conversion.** If a school district converts an emergency ((~~expulsion~~)) removal to a suspension or expulsion, the district must:
  - (a) Apply any days that the student was emergency ((~~expelled~~)) removed before the conversion to the total length of the suspension or expulsion; and
  - (b) Provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.
- (5) **Reporting.** All emergency ((~~expulsions~~)) removals, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within ~~((twenty-four))~~ 24 hours after the start of the emergency ((~~expulsion~~)) removal.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

- WAC 392-400-515 Emergency ((expulsions)) removals—Notice to student and parents.**
- (1) **Initial notice.** After an emergency ((~~expulsion~~)) removal, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes 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.
  - (2) **Written notice.** Within ~~((twenty-four))~~ 24 hours after an emergency ((~~expulsion~~)) removal, a school district must provide written notice of the emergency ((~~expulsion~~)) removal to the student and

parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel, or poses an immediate and continuing threat of material and substantial disruption of the educational process;

(b) The duration and conditions of the emergency (~~(expulsion)~~) removal, including the dates on which the emergency (~~(expulsion)~~) removal will begin and end;

(c) The opportunity to receive educational services during the emergency (~~(expulsion)~~) removal under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section 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.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-520 Emergency (~~(expulsions)~~) removals—Optional conference with principal.** (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency (~~(expulsion)~~) removal, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency (~~(expulsion)~~) removal.

(4) **Language assistance.** The school district must ensure the conference is held 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.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-525 Emergency ((expulsions)) removals—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal an emergency ((expulsion)) removal to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency ((expulsion)) removal. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency ((expulsion)) removal.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee 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 district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency ((~~expel~~) remove) the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, 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 district 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 district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(i) The district 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 (~~(expulsion)~~) 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 district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district 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 district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district 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.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-530 Emergency (~~(expulsions)~~) removals—Review and reconsideration.** (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency (~~(expulsion)~~) removal, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council 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 school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency (~~(expulsion)~~) removal, the decision to emergency (~~(expel)~~) remove the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council 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 identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district'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 (~~(expulsion)~~) removal has not yet ended or been converted, whether the school district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.

(5) **Language assistance.** The school district 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.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-610 Educational services during suspension, expulsion, or emergency (~~(expulsion)~~) removal.** (1) **Educational services.**

(a) A school district may not suspend the provision of educational services to a student in response to behavioral violations.

(b) During the suspension, expulsion, or emergency (~~(expulsion)~~) removal of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to:

(i) Continue to participate in the general education curriculum;

(ii) Meet the educational standards established within the district; and

(iii) Complete subject, grade-level, and graduation requirements.

(c) When providing a student the opportunity to receive educational services under this section, the school district must consider:

(i) Meaningful input from the student, parents, and the student's teachers;

(ii) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and

(iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.

(d) A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

(2) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:

(a) A description of the educational services that will be provided; and

(b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

(3) **Exclusions for up to five days.** For students subject to suspension or emergency (~~expulsion~~) removal for up to five consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(4) **Exclusions for six to (~~ten~~) 10 days.** For students subject to suspension or emergency (~~expulsion~~) removal for six to (~~ten~~) 10 consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency (~~expulsion~~) removal and periodically thereafter until the suspension or emergency (~~expulsion~~) removal ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would al-

low the student to keep current with assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(5) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than (~~ten~~) 10 consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(6) **Language assistance.** The school district must ensure that notices and communications required under this section 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.

### OTS-5254.1

AMENDATORY SECTION (Amending WSR 22-13-056, filed 6/8/22, effective 8/1/22)

**WAC 392-401-020 Excused absences.** (1) Absences due to the following reasons must be excused:

(a) Physical health or mental health symptoms, illness, health condition or medical appointment for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or medical appointments include, but are not limited to, medical, counseling, mental health wellness, dental, optometry, pregnancy, and behavioral health treatment (which can include in-patient or out-patient treatment for chemical dependency or mental health);

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

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

(d) Court, judicial proceeding, court-ordered activity, or jury service;

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

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

(g) Absence directly related to the student's homeless or foster care/dependency status;

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

(i) Absences due to suspensions, expulsions or emergency (~~expulsions~~) removals imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

- (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;
  - (k) Absences due to a student's migrant status;
  - (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and
  - (m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.
- (2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:
- (a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;
  - (b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;
  - (c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and
  - (d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.
- (3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the criteria in subsections (1) and (2) of this section and school district policy for an excused absence.

AMENDATORY SECTION (Amending WSR 21-17-088, filed 8/13/21, effective 9/13/21)

**WAC 392-401-040 Student absences—General requirements. (1)**

Students shall not be considered absent if:

- (a) The student has been suspended, expelled, or emergency (~~expelled~~) removed pursuant to chapter 392-400 WAC;
  - (b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
  - (c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.
- (2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.