

## SUPERINTENDENT OF PUBLIC INSTRUCTION

Chris Reykdal Old Capitol Building · PO BOX 47200 · Olympia, WA 98504-7200 · http://www.k12.wa.us

August 13, 2018

TO: Interested Persons

**FROM:** Dierk Meierbachtol, Chief Legal Officer

Office of Superintendent of Public Instruction (OSPI)

SUBJECT: Concise Explanatory Statement for Chapter 392-400 WAC (Student Discipline): Summary of

Rulemaking and Response to Comments, Version 2

#### I. PURPOSE

This Concise Explanatory Statement provides information about OSPI's permanent rule adoption in chapter 392-400 of the Washington Administrative Code (WAC) regarding student discipline.

Revised Code of Washington (RCW) 28A.600.015 requires OSPI to adopt lawful and reasonable rules prescribing the substantive and procedural due process guarantees of students in school districts. These rules are found in chapter 392-400 WAC. The rules in chapter 392-400 WAC outline how a public school district may administer student discipline, including notice for students and parents and due process protections for students who are suspended or expelled.

The Administrative Procedure Act requires an agency to prepare a Concise Explanatory Statement when it adopts a permanent rule (RCW 34.05.325). The purpose of the Concise Explanatory Statement is to:

- 1. Identify the agency's reasons for adopting the rule;
- 2. Describe differences between the text of the proposed rule and the text of the rule as adopted; and
- 3. Summarize all comments received regarding the proposed rule and the agency's response to comments, including how the final rule reflects consideration of the comments.

OSPI sends the Concise Explanatory Statement to any person upon request and to everyone who provided comments during the formal comment period, including written comments and testimony during the public hearing. This document also serves as the summary of public hearing comments to the agency head required under RCW 34.05.325(4).

This Version 2 of the Concise Explanatory Statement corrects typographic and formatting errors in the prior version issued July 30, 2018. It contains no substantive revisions.

#### II. BACKGROUND

### A. CR-101: Preproposal Statement of Inquiry

OSPI filed a CR-101 (Preproposal Statement of Inquiry) on November 1, 2016 (WSR 16-22-072) providing notice of the intent to consider rulemaking to revise chapter 392-400 WAC regarding student discipline and the substantive and procedural due process guarantees of students in Washington public schools.

#### B. CR-102: Notice of Proposed Rule Making

On September 6, 2017, OSPI filed proposed revisions to Chapter 392-400 WAC (WSR 17-18-104). The CR-102 (Notice of Proposed Rule Making) was published in the Washington State Register (WSR) at least twenty days before OSPI held the public hearings on the proposed rules.

OSPI held four hearings on the proposed rules: Spokane, WA | October 17, 2017

Yakima, WA | October 30, 2017 Renton, WA | November 7, 2017 Olympia, WA | November 13, 2017

Written comments on the proposed rules were accepted by mail, fax, e-mail, and hand-delivery through November 13, 2017. After considering all of the comments, OSPI revised the proposed rules.

### C. Supplemental CR-102: Notice of Proposed Rule Making (Revised Proposed Rules)

On February 21, 2018, OSPI provided notice that it was reopening the proceedings for additional public comment on the revised proposed rules (WSR 18-05-099). A supplemental notice was published on March 12, 2018 to include an additional public hearing (WSR 18-07-028). The supplemental CR-102 notices were published in the Washington State Register at least twenty days before OSPI held the additional public hearings on the revised proposed rules.

OSPI held three public hearings on the revised proposed rules:

Olympia, WA | March 30, 2018 Tukwila, WA | April 2, 2018 Spokane, WA | May 2, 2018

Written comments on the revised proposed rules were accepted by mail, fax, e-mail, and hand-delivery through May 2, 2018.

#### D. Supplemental CR-102: Notice of Proposed Rule Making (Revised Proposed Rules)

On June 6, 2018, OSPI provided notice that it was reopening the proceedings for additional public comment on the revised proposed rules (WSR 18-12-122). The supplemental CR-102 notices were published in the Washington State Register at least twenty days before OSPI held the additional public hearings on the revised proposed rules.

OSPI held a public hearing on the revised proposed rules on July 18, 2018, in Olympia, WA. Written comments on the revised proposed rules were accepted by mail, fax, e-mail, and hand-delivery through July 18, 2018.

#### E. CR-103: Rule Making Order

After reviewing the comments received at the public hearings and in writing, OSPI is adopting permanent rules. OSPI filed the CR-103 (Rule Making Order) on July 30, 2018 (WSR 18-16-081). The permanent rules will become effective on August 30, 2018, except for the following, which will be effective on July 1, 2019: WAC 392-400-025, 392-400-110, 392-400-430 through 392-400-480, and 392-400-510 through 392-400-530. The final rule text is available at: <a href="Student Discipline Rules">Student Discipline Rules</a>.

#### **III. REASON FOR ADOPTION**

The revisions to the student discipline rules in Chapter 392-400 WAC incorporate substantial stakeholder feedback, including formal comments OSPI received in writing and during eight public hearings.

The revised rules are intended to:

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

August 13, 2018

Page 3

### IV. DIFFERENCES BETWEEN THE PROPOSED RULE AND FINAL RULE

The differences between the proposed rules and the final adopted rules are described below. OSPI made these changes in response to comments OSPI received, to ensure clarity and consistency, and to meet the intent of relevant statutes.

WAC	Edit/Change
WAC 392-400-335	The following language was removed from WAC 392-400-335: "(4) Reporting. The principal or designee must report all classroom exclusions, including the behavioral
	violation that led to each classroom exclusion, to the school district superintendent or
	designee."
WAC 392-400-440	Section (2) was revised to state: "A school district may only administer a long-term
	suspension: (a) For behavioral violations under RCW 28A.600.015(6)(a) through (6)(d)."
WAC 392-400-445	Section (2) was revised to state: "A school district may only administer an expulsion: (a)
	For behavioral violations under RCW 28A.600.015(6)(a) through (6)(d); "
WAC 392-400-510	Section (1)(b) was revised to state: "An immediate and continuing threat of material and
	substantial disruption of the educational process <del>, subject</del> ."
WAC 392-400-610	The following language was added to WAC 392-400-610: "(a) A school district may not
	suspend the provision of educational services to a student in response to behavioral
	violations."

## V. SUMMARY OF COMMENTS AND OSPI RESPONSES

OSPI carefully considered all of the comments received at the public hearings and in writing during the formal comment period. Below is the summary of all comments received and the actions taken in response to those comments.

## Comments regarding the initial proposed rules, filed September 6, 2017 (WSR 17-18-104)

### 1-A. General Comments

Comment Summary	Response
School Safety and Educational Environment	
Commenter shared their personal experience as a	No action taken. OSPI's statutory authority to
parent of a student who has been threatened by a	prescribe rules governing the procedural and
classmate. The commenter noted the school would not	substantive due process guarantees of students
remove the student due to limitations on suspensions. The	in schools is constrained by other statutes
commenter proposed that students who threaten to kill	governing student discipline. Limitations on the
others should be, at a minimum, removed from school for up	maximum length of a suspension or expulsion are
to a year, as students are for bringing firearms to school.	established in statute under RCW
Suspensions or expulsions for these types of behavioral	28A.600.020(6), and limitations on the types of
violations should be required. The commenter also	behavior for which a district may consider long-
recommended there should be no limit to the cumulative	term suspension or expulsion are established in
days of suspensions, or academic term limit, for violent,	RCW 28A.600.015(6). OSPI believes it is therefore
aggressive, assaultive, threatening, or repeated substantial	precluded by law from amending the rules in the
disruptive behavior. "I simply want to keep students safe. I	manner requested by the commenter.
don't know if you even knew that administrators are forced	
to overlook some of these behaviors because they only have	In addition, OSPI does not believe the
a limit of so many days they can suspend a student Your	commenter's proposed change is necessary to
laws prevent that from happening due to the suspension	address cases where students present violent
limitations."	behavior. RCW 28A.600.020(6)and WAC 392-400-

	Ţ
2. Several commenters noted that schools and classrooms must be a safe learning environment for all students.	than an academic term where warranted based on public health or safety. In addition, the final rules do not limit school districts from taking a range of appropriate actions to respond to threats or aggressive behavior without resorting to suspension or expulsionincluding using threat assessments to manage or reduce a threat posed by a student.  Action taken. OSPI agrees that the final rules should recognize that school districts should provide a safe learning environment for students. WAC 392-400-010 therefore has been amended to clarify that one purpose of the rules is to ensure that school districts in Washington provide a safe and supportive learning environment for all students. In addition, WAC 392-400-430 and WAC 392-400-810 have been amended to identify when districts may preclude certain students from returning to their regular educational setting following the end date of a
	suspension or expulsion.
	, , , , , , , , , , , , , , , , , , , ,
<ul> <li>3. Commenter expressed concern that disruptive student behavior is an increasing issue. The commenter observed that teachers are being attacked in classrooms. Suspensions have been so limited that students know they can get away with almost anything. Even if a teacher doesn't want to send a student home, the administrator might not even place students in in-school suspension. As a result, teachers are forced to keep disruptive students in their classrooms.</li> <li>4. Commenter shared their personal experience as a teacher who was groped by a student. After expelling the student, the school district allowed the student to return to school for the senior graduation breakfast and graduation. The commenter stated that this prevented them from attending due to a hostile and unsafe environment. The</li> </ul>	Action taken. See response to 1-A-2.  Comment noted. See response to 1-A-2.
commenter noted that their complaint to the district was unheeded and they feel they were treated with disregard and indifference by the district and hostility by the district administrator.	
Students with Disabilities	
5. Commenter noted that it's a world of difference	Comment noted.
between what is written in the law and the spirit of the law and how it is actually interpreted and implemented by school districts. The commenter shared their personal experience as a parent of a student with disabilities who had been suspended. The commenter stated the school district	
would not accept that the behaviors were related to the student's disabilities because the legal protections that	

would require the student to remain in school were inconvenient.	
6. Commenter expressed concerns about how the rules will integrate with existing state and federal law regarding discipline of students receiving special education services.	Comment noted. The final rules are intended to establish uniform minimum due process requirements for student discipline in school districts. The rules apply to all students, regardless of whether the students are eligible for special education services. State and federal special education laws, including the Individuals with Disabilities Education Act and its implementing regulations, impose additional requirements on school districts with regard to students with disabilities. WAC 392-400-020 therefore clarifies that the final rules must be construed in a manner consistent with existing state and federal laws concerning students receiving special education services.
7. Several commenters recommended that OSPI open comprehensive rulemaking regarding the discipline of students with disabilities in chapter 392-172A WAC. One commenter suggested that OSPI "reevaluate the existing WACs both to incorporate federal guidance on the inclusion of behavioral supports for students with disabilities and to address the systemic crisis in discriminatory discipline of students with disabilities." Another commenter suggested that, to fully address the disproportionate use of exclusionary discipline on students with disabilities, WAC 392-172A-05140 through -05175 must be revisited in light of the legislature's recognition of the negative impacts of	Comment noted. See response to 1-A-6.
exclusionary discipline and efforts to decrease its use.  8. Commenter suggested that the rules clarify how a student's behavior intervention plan (BIP) should be more	No action taken. See response to 1-A-6.
fully integrated in the child's school discipline.  9. Commenter expressed concern that students who have IEPs are treated as a footnote in the general education discipline policy and that input into the special education portion of discipline policy is not included in this process.	Comment noted. See response to 1-A-6.
10. Several commenters expressed concern that the special education discipline rules are not always followed. One commenter noted: "My daughter was suspended when the school didn't follow the IEP by creating an alternative recess for her, as we all agreed to, and she acted out, as expected and was suspended for a day. Students in our district, even now, continue to be suspended for manifestations of their disability. I would like our state to be a leader in protecting students with disabilities from illegal exclusionary practices."	Comment noted. See response to 1-A-6.
11. Commenter shared their personal experience as a parent of a student who has been disciplined and excluded from school. The commenter also expressed concern that students are being removed from school without being evaluated for the presence of disabilities. Commenter	No action taken. See response to 1-A-6.

Page 6

suggested OSPI should clarify that the regulations apply to all students and students with disabilities have additional rights under Section 504 and special education laws. The rules should also clarify that when a student who has or is suspected to have a disability, including mental or emotional illness, is being removed from the classroom, the school is required to notify parents about processes to initiate a special education or Section 504 evaluation. Every student should be considered a candidate for a special education or Section 504 evaluation when behavior interferes with the	
student's ability to remain in a regular education setting.	
12. Commenter shared their personal experience as a parent of a student with disabilities. Many students with disabilities are nonverbal, and some have behavioral issues. Some of these students do not know how to communicate	Comment n under state including Se 1973, chapt

Comment noted. School districts are required under state and federal anti-discrimination laws, including Section 504 of Rehabilitation Act of 1973, chapter 29A.642 RCW, and chapter 392-190 WAC—to provide students with disabilities with educational opportunities and benefits equal to those provided to students without disabilities, including accommodations, aids, and services.

13. Commenter suggested having a special education teacher quota for schools because there are so many students who qualify for services and not enough teachers who teach special education. Behaviorists should be available in classrooms and schools that people can have access to when discipline arises. "As a teacher, I do not have the resources when I have students with disabilities or learning disabilities. I do not have any support whatsoever."

their needs, and school administrators interpret their behavior as negative and suspend them. The commenter

stated that their student's school district denied nonverbal

students the opportunity to communicate using technology.

The school district must provide opportunities, tools, and

technology for students to communicate effectively.

No action taken. OSPI believes the commenter's proposed change is outside the scope of this rulemaking as authorized under RCW 28A.600.015.

14. Commenter recommended the rules be clarified to ensure the provision of special education services and requirements around student engagement are meant to supplement, not replace, obligations around students eligible for special education services.

No action taken. See response to 1-A-6.

#### **Best Practices and Alternatives to Suspension**

15. Commenter expressed concerns that school staff may not be aware of OSPI's Behavior Menu of Best Practices or how to implement such practices. Commenter recommended disseminating the Behavior Menu of Best Practices and providing training for school staff.

Comment noted. Since the passage of SB 5946 in 2013, the Learning Assistance Program (LAP) department staff at OSPI has worked with a panel of experts, the Washington State Institute for Public Policy (WSIPP), and multiple OSPI department staff from across the agency in English language arts, mathematics, and behavior. OSPI annually updates the menus of best practices in accordance with RCW 28A.165.035. Additionally, OSPI notifies school districts of the menu updates, publishes the menus online in an easily accessible format with supplemental materials, and collaborates with educational service districts to hold menu implementation workshops. OSPI intends to continue these efforts.

16. Several commenters expressed support for researching and implementing best practices, including resources such as	Comment noted.
OSPI's menu of best practices for behavior.  17. Commenter recommended that OSPI consider allowing interventions for drug- and alcohol-related behavior. The commenter suggested that long-term student removal, even with educational services, is rarely successful.	No action taken. OSPI believes the suggested change is not necessary because nothing in these rules preclude school districts from implementing tiered systems of intervention, including interventions for drug- and alcohol-related
	behavior.
18. Commenter noted that schools, families, and children need resources, support, and behavioral interventions.	Comment noted.
19. Commenter expressed support for sound, positive discipline in all schools. The commenter suggested the focus in schools should be on minimizing suspensions, implementing restorative justice, and training educators on cultural competency.	Comment noted. Starting in the 2019–20 school year, WAC 392-400-110 requires school districts to adopt policies and procedures that 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 behavioral expectations. These 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—which includes "Restorative Justice" and other
20. Commenter noted the overall approach to school	positive behavioral intervention strategies as best practices.  In addition, the final rules provide that districts must generally attempt other forms of discipline before excluding students in non-emergent cases. See WAC 392-400-330, WAC 392-400-435.  OSPI encourages districts to use best practices and strategies in the state menu for behavior developed under RCW 28A.165.035, including strategies for positive behavioral interventions and supports, when administering other forms of discipline.  Comment noted.
discipline needs to change from a punitive model to a positive behavior, restorative justice approach with the youth at the center.	Comment noted.
21. Commenter expressed concern that the rules are very punitive because they are focused on suspensions and expulsions. The commenter notes that research and anecdotal evidence demonstrate that such punitive responses do not work. The commenter shared examples of how exclusionary discipline does not support students. The commenter also noted that keeping students in school maintains FTE funding.	Comment noted. See response to 1-A-19.

The commenter recommended OSPI embrace nonviolent	
1	
options of communication instead of suspension. Model	
humanity rather than disparaging or derogatory behavior.	
22. Commenter expressed appreciation that the rules Comment noted.	
encourage schools to look at evidence-based and	
developmentally appropriate interventions for students, but	
they encouraged OSPI to lead the way in building, designing,	
and encouraging an entirely new paradigm for public school	
education.	
The commenter suggested that we need to stop connecting	
behavior with access to education. Students are always going	
to come to school with behavior. Schools need to be	
designed, developed, and prepared to educate them. "It's	
very punitive, and it models our criminal justice system in a	
way that makes public education completely nonsensical."	
The commenter noted there are other ways to respond to	
students without them losing their education.	
23. Commenter suggested schools should provide a safe Comment noted.	
space for students when they are disciplined to help them	
through their behaviors. The commenter suggested an open	
room with light blue walls, blankets, and stuffed animals.	
The commenter noted that locking students away to self-	
regulate is not a good thing.	
24. Commenter shared their personal experience as a Comment noted.	
parent of a student with autism who has been sent home	
repeatedly and suspended for behavior related to autism.	
The commenter expressed support for restorative practices,	
parent engagement, alternatives to suspension, equitable	
and culturally responsive discipline, and educational	
services.	
25. Commenter expressed support for the use of evidence- No action taken. OSPI believes the comment	or's
based restorative systems as alternatives to exclusion, proposed change is not necessary because the	
	ie
especially for students who are high risk. The commenter final rules require school districts to provide	
observed that exclusions for behaviors such as disrespect are written notice of any suspension or expulsion	
subjective, and kids learn best about their impact on other students and parents identifying other forms	of
people when they have an opportunity to stay in relationship discipline that the district considered or	
with others. Exclusions teach kids "I don't belong here, I'm attempted, and an explanation of the district	ː'S
bad," especially for students who have already experienced decision to administer the suspension or	
trauma. expulsion. See WAC 392-400-455(2).	
The commenter suggested OSPI should recommend in- Starting in the 2019–20 school year, moreov	
school suspension as the best practice because it's hard to WAC 392-400-110 requires school districts to	
replicate education in a short-term suspension.  adopt policies and procedures that identify of the state of	
forms of discipline that school personnel sho	
The commenter also recommended schools be required to administer before or instead of administering	_
document the use of best practices. classroom exclusion, suspension, or expulsio	n to
support students in meeting behavioral	
expectations. These other forms of discipline	
involve the use of best practices and strategi	es
included in the state menu for behavior	

August 13, 2018

	T
	developed under RCW 28A.165.035—which includes "Restorative Justice" and other positive behavioral intervention strategies as best practices.
26. Commenter requested the "state menu for behavior be	Comment noted. The state menu of best
linked to the rules online" or be included on a website for	practices and strategies for behavior is available
discipline supports.	on several OSPI webpages, including OSPI's
and the same of th	Student Discipline webpage.
Parent and Family Engagement	
27. Commenter shared their personal experience as a	Comment noted. The final rules are intended to
parent of a student with disabilities who was suspended	specifically support school districts' engagement
multiple times. The commenter suggested schools should	with parents and families to take into account
take the family and what they are experiencing into account	challenges that students and families experience
when dealing with situations.	=
when dealing with situations.	outside of school. Among other things, WAC 392-
	400-110 requires districts, starting in 2019, to
	have policies and procedures that provide for
	early involvement of parents in efforts to support
	students in meeting behavioral expectations.
	WAC 392-400-110 also requires district policies
	provide that school personnel make every
	reasonable attempt to involve parents in the
	resolution of behavioral violations for which
	discipline may be administered.
	The final rules also provide that, beginning in
	2018, school districts are required to consider, as
	appropriate, students' family norms and values
	when developing reengagement plans under
	WAC 392-400-710.
	W/10 332 400 710.
28. Commenter stated that tribal people are taught that	No action taken. One purpose of the final rules is
children are sacred. "Throughout that sacred way of life, it	to support school districts in engaging with
also means that we're being respectful of the land where	parents, families, and communities in decisions
they come from. My grandchildren come from this land.	related to the development and implementation
They have a deep history from this land. So this land is	of student discipline policies and procedures. To
important in our community's art. As I read this, I don't	that end, WAC 329-400-110 requires school
necessarily see that you value our communities."	districts to work with local communities over the
· · ·	next year in developing revised discipline policies
The commenter also observed the importance of	that are aligned to these rules. This includes
communicating with parents in a meaningful way that	WAC 392-400-110(1)(h), which provides that
respects and values them, grandparents, and community	districts must establish grievance procedures to
members who raise children.	address grievances related to discipline that
	excludes a student from extra-curricular
The commenter suggested the rules should acknowledge	activities. Under this authority, school districts
and respect who the people in communities are and where	should adopt policies and procedures addressing
they come from. The commenter noted the rules do not	student exclusions from graduation ceremonies
address the cultural oppression and trauma Native people	for behavioral violations.
have experienced.	10. Deliavioral violations.
	To the extent that a district excludes a student
	from graduation as a condition of a suspension or
	o and a second of a suspension of

The commenter suggested the rules should clarify whether a	expulsion, OSPI believes the rules' due process
student who is suspended may still participate in	procedures for suspension or expulsion would
commencement or other graduation ceremonies.	apply.
29. Commenters expressed support for the early and	Comment noted.
increased parental or caregiver involvement in the discipline	
process. Commenters specifically expressed appreciation	
that the proposed rules "(i) recognize that the purpose of	
the chapter is to engage parents, students, families, and the	
community in developing and implementing discipline	
policies; (ii) require school districts to develop policies that	
provide for early engagement of parents in addressing	
discipline incidents; (iii) require more thorough notices to	
parents of suspension and expulsion; (iv) clarify districts'	
requirements to provide language access for several crucial	
hearings and documents; (v) enable informal meetings with	
principals whenever there is a suspension or expulsion; (vi)	
ensure parents have access to student educational records	
during any appeal; (vii) ensure that parents' expertise is	
considered when determining appropriate educational	
services; (viii) develop clearer processes for parent	
participation in reengagement meetings; and (ix) extend	
some timelines for appeals." Commenters noted that	
parents are crucial partners in educational success; when	
parents and schools communicate, they share valuable	
information about children's behavior and can reinforce	
more positive behaviors at home and school.	
30. Commenter expressed concerns that discipline issues	Action taken. OSPI agrees that school districts
could be the due to a lack of successful communication	should involve parents in the discipline process
between the teacher and student. Commenter suggested	as soon as possible. OSPI has therefore amended
that a meeting be scheduled between the student's parent	WAC 392-400-450 to provide increased
or guardian and teacher, while giving parents the right to	opportunities for parent participation during an
request a third-party mediator to help resolve the issue. The	initial hearing with the student. The final rules
school district should notify the parent(s)/guardian in writing	further clarify that language assistance
and an acknowledgment of receipt of notification from the	requirements also apply to the initial hearing
parents/guardian should be required. School districts should	with the student, the optional conference with
provide interpreters or translators when needed.	the principal, behavior agreements, notice for
	classroom exclusions, and notices and
	communications regarding the provision of
	educational services during suspension or
	expulsion.
31. Commenters recommended that the rules recognize	Action taken. See response to 1-A-30.
that parents are crucial partners in educational success, and	·
increased parental involvement is correlated with decreased	
behavior problems. HB 1541 (2016) recognized the	
importance of culturally competent parental engagement to	
ensure that schools do not perpetuate historic cultural	
norms and inadvertently exclude parents of color, parents	
who do not speak English, and other parents who may not	
be reached by traditional methods of parental engagement.	
	<u> </u>

	_
32. Commenter encouraged OSPI to provide significant training and guidance on best strategies for parent communication.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
33. Commenter shared their personal experience as a parent of a student with disabilities who was sent home because of behaviors related to the medication they were taking. The commenter tried to work with the school to develop a Section 504 plan, but the school stopped communicating with them. The commenter noted that it is important to engage parents early on, and parents should be treated as equals. They asked OSPI to increase parent engagement in the rules and develop training to ensure the rules are fully implemented in schools.	Action taken. OSPI agrees that school districts should involve parents in the discipline process as soon as possible. OSPI has therefore amended WAC 392-400-450 to provide increased opportunities for parent participation during an initial hearing with the student. See response to 1-A-30.
34. Commenter suggested that the requirement that notices to parents be in a language they understand should expand to requiring plain language for parents from all types of backgrounds. The commenter shared their personal experience attempting to understand IEP notices of their rights.	No action taken. OSPI declines to make the change suggested by the commenter. Requiring all school district communications related to student discipline be in written in plain language, while well-intentioned, would be difficult to uniformly implement and would likely be overly burdensome. OSPI nevertheless encourages school districts to continue to explore ways to provide public communications in a manner that all members of the public can understand.
35. Commenter recommended parents have an advocate available for parents to guide them through the confusing discipline process.	Comment noted. The final rules are intended to simplify the due process procedures provided under the prior rules for the purpose of, among other things, helping parents better understand students' rights under the law.
36. Commenter noted that parents play an important role in the special education framework, but parents report they often do not know what's going on with their children who have disabilities.	Comment noted.
37. Commenter noted parents need to be involved in the discipline process to help their children understand long-term consequences and help continue academic success.	Action taken. See response to 1-A-30.
38. Commenter suggested that OSPI require districts to provide language access services to parents for informal conferences with school administrators.	Action taken. See response to 1-A-30.
39. OSPI should require that the revised discipline rules be disseminated to every student in the language spoken at home. School districts and school boards should actively disseminate this information.	No action taken. OSPI believes the commenter's proposed change is not necessary because WAC 392-400-110(3) requires school districts to disseminate discipline policies and procedures, including providing language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.
40. Several commenters expressed support that the proposed rules clarify a district's obligations under state and	Action taken. See response to 1-A-30.

federal nondiscrimination law to provide translation and interpretation services for parents who do not speak English. Commenters described situations when non-English speaking families did not understand the discipline process or inadvertently waived appeal rights because they were never given discipline paperwork in a language they could understand, or had to ask their children to sign the discipline paperwork.  Commenters recommended that the rules clarify that language assistance is required for all communication at all stages in the discipline proceedings, including at the following stages:  Initial hearing with student (WAC 392-400-450) Optional conference with principal (WAC 392-400-460) Notice of classroom exclusion (WAC 392-400-610) Notice of the decision to convert an emergency expulsion to a suspension or expulsion (WAC 392-400-510).	
41. Commenter recommended that the rules state that schools can use Title II funds for discipline-related interpretation and translation services.	No action taken. OSPI believes the commenter's proposed change is not necessary. School districts are required to provide language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 and may use federal funds to meet such requirements. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
42. Commenter noted that many bilingual families are not aware of the current or proposed discipline rules and asked if the proposed rules are available in other languages beside English.	Comment noted. OSPI posted summaries of the proposed rules on the agency's website in languages other than English, and intends to provide guidance regarding the rules available to the public in multiple languages.
43. Commenter noted the lack of support for families that are not English speakers. Parents who do not speak English do not have the same opportunities to advocate for their children as English-speaking parents. An ombuds for families may represent you and help mediate with a school district, but Spanish-speaking ombuds are not available. A lot of parents do not know how the school system works, and it's crucial that they know what their rights are.	Comment noted.
44. Commenter shared their personal experience as a parent of a student with ADHD who has been suspended multiple times. Commenter noted the school did not always communicate with them, and they noted it is hard for parents to help their students from home when schools do not communicate with them outside of normal Section 504 plan meetings.	Comment noted.

45. Commenters recommended all notices sent home to the student and parents, if sent by email, be sent to an email address at which the parent has consented to receive notifications from the school.	No action taken. The final rules generally permit school districts to provide notice of disciplinary actions by e-mail. See, e.g., WAC 392-400-455, WAC 392-400-465, WAC 392-400-470. If a school district provides notice under these provisions to an address that the district believes, in good faith, the parent has consented to receive email, OSPI believes the school district has met its obligations under the final rules.  Nothing in the final rules precludes a school district from adopting policies and procedures setting forth its own unique procedure for providing parental notice, so long as they meet the minimum requirements of these rules.
Cultural Responsiveness	
46. Commenter stated that, based on a recent study out of the University of Washington, parents want to be heard and want their children to be recognized and included. Those are the most important things to incorporate into any plan, in addition to changing curriculum and having deeper information about people's heritage. The commenter recommended that programs be systemic and culturally-based. The commenter shared information about a summer program for Marshallese middle school students in Seattle Public Schools as an example. The commenter observed that this program provided a culturally-based experience about students' community, culture, heritage, and ancestry, while improving their math, language, and reading.	Comment noted.
47. OSPI should provide more instruction to schools on what it means to be culturally competent in implementing discipline.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
48. Commenter recommended that OSPI require cultural responsiveness training for all teachers, administrators, and staff to ensure proper and equitable implementation of culturally responsive discipline policies and procedures.	Comment noted. Under RCW 28A.415.420, school districts are encouraged to provide opportunities for all school and school district staff to gain knowledge and skills in cultural competence, including in partnership with their local communities.
49. Several commenters recommended that the rules provide more clarity and accountability regarding culturally responsive practices.  50. Commenter noted that sometimes small incidences happen in a classroom that lead up to a suspension or expulsion. The smaller incidences together "break the camel's back," and they may have resulted from implicit	Action taken. See response to 1-A-48.  Comment noted. See response to 1-A-48.
biases that teachers have upon students with backgrounds different from their own. The commenter strongly recommends implicit bias trainings or assessments for teachers as part of the rule implementation.	

August 13, 2018

Page 14

51. Commenter noted that, with regard to culturally responsive parent engagement and language access, parents are crucial partners in educational success. When parents and schools communicate, they share valuable information about children's behavior and can reinforce more positive behaviors at home and at school. We appreciate the significant changes to the regulations to encourage early communication with parents about discipline issues and to ensure language access and culturally responsive communication.

Comment noted.

### **Disproportionate Discipline**

52. Commenters noted that reducing suspension and expulsion and engaging families in student supports are crucial to fulfilling the promise of educational excellence and opportunity for students. Exclusionary discipline is strongly correlated with reduced academic achievement and high school graduation rates, and increases the likelihood that young people will become involved in the juvenile justice system. Exclusionary discipline is associated with negative school climate and disconnection to school, even for students who have not been suspended or expelled. These impacts fall most harshly on students of color, students with disabilities, and students in foster care, all of whom are disproportionately disciplined throughout Washington.

Comment noted.

53. Commenters urged OSPI to focus on reducing disparities for students with disabilities. Commenters noted that students with disabilities are more than twice as likely as their peers to be suspended or expelled throughout the state.

One commenter noted, "School suspension and expulsion interrupts instruction, and is associated with negative educational and life outcomes, including school dropout, academic failure, and incarceration. Students with disabilities may be especially vulnerable to interruptions in their education. Because students with disabilities are disproportionately suspended and expelled, they may experience the above noted negative educational and life impacts at a higher rate than their peers without disabilities. Therefore, the new rules should specifically address the needs of students with disabilities in order to end the disproportionate use of suspension and expulsion on students with disabilities."

54. Commenters observed that youth in foster care are disciplined at a disproportionate rate, and they recommended this data should be tracked and monitored along with race and gender. One commenter noted over half of their caseload had been suspended or expelled.

No action taken. The final rules are designed to prescribe the substantive and procedural due process guarantees of all students in the common schools of the state in accordance with RCW 28A.600.015 and RCW 28A.600.020. The rules are intended to establish uniform minimum due process requirements for student discipline in school districts. OSPI believes that additional protections governing discrete categories of students are outside of the scope of these rules. In addition, because other statutes and regulations—including the Individuals with Disabilities Education Act, Section 504 of Rehabilitation Act of 1973, chapter 29A.642 RCW, and chapter 392-190 WAC—address the concerns raised by these commenters, OSPI believes it is not necessary to change these final rules in the manner recommended by the commenters.

No action taken. OSPI believes the commenters' proposed change to the rule is not necessary because, the agency currently collects student-level data by foster care status under RCW 28A.300.042. In accordance with RCW 28A.320.211, the final rules require districts to use disaggregated data collected pursuant to RCW 28A.300.042 to monitor the impact of the

overrepresentation of students of color in schools' use of

suspension and expulsion.

August 13, 2018

Page 15

school district's discipline policies and procedures. In addition, the final rules reflect data collection and reporting requirements that OSPI's K-12 Data Governance Group has previously approved and implemented under RCW 28A.300.042 and RCW 28A.300.507. 55. Commenter noted that the proposed rules will improve Comment noted. the system that has disproportionately impaired academic progress of Black and other marginalized students. 56. Commenter noted, "Pinpointing discipline No action taken. OSPI believes the commenter's disproportionality is necessary to help school leaders, proposed changes to the rules are not necessary community members and community-based organizations because OSPI added several new state-level (CBOs) make decisions on how to change school cultures behavior reporting categories during the 2013that are negatively affecting the educational experiences of 14, 2014–15, and 2015–16 school years under our children. Frequently, current data on behaviors leading RCW 28A.300.042, based upon the to suspension are lost because they are coded as 'other' recommendations of the Student Discipline Task behavior in the OSPI data system. In our work with available Force established under RCW 28A.600.490. OSPI OSPI discipline data, we have found the following data provides technical assistance to student quality limitations: information system (SIS) vendors and districts to Districts with more behavior codes than minimum align SIS behavior codes with the appropriate CEDARS behavior codes to reduce the proportion state requirements must aggregate these codes to of SIS behavior codes that are uploaded to 'other' as a behavior type. As a result, a lot of behavior information gets lost as specific categories CEDARS as "Other." (CEDARS is Washington that do not fit the OSPI categories are coded as State's statewide longitudinal education data system.) As a result, the statewide Behavior Proportion for the behavior category "Other" and The majority (80%) of disciplinary actions from a behavior coded as 'other' under OSPI guidelines Short-term Suspension has decreased from over 60% in the 2012–13 school year to under 30% in result in a short-term suspension. This indicates that the 2016-17 school year. most of these behaviors are serious enough to warrant exclusionary discipline, but because of vague coding we are left to guess what behaviors OSPI does not agree with the commenter's suggestion that school districts are limited to are being considered as problematic." using disaggregated state-level data in order to make decisions at the local level to improve Commenter recommended that: "1. At the very minimum, any behavior that warrants an outschool climate and reduce disparities in student outcomes. Nothing in the final rules prevents of-school suspension should include a specific behavior type school districts from using detailed discipline data in the OSPI data system so information reflects what school collected at the district, building, and classroom districts report; [and] 2. OSPI and school districts work together to establish a level (i.e., office discipline referrals or "ODRs", detentions, and behavior monitoring) to inform common set of more detailed discipline behavior and potential changes to local policies and practices. intervention categories to provide further disaggregation OSPI provides technical assistance encouraging than currently outlined in items (4)(g) and (4)(h) of RCW districts and schools to collect and review 28A.300.042. These new, detailed reporting categories detailed data to contextualize student behaviorshould allow disaggregation of 'other' in both behavior and including the use of both academic and intervention categories across all types of reportable nonacademic data to inform problem-solving interventions." practices. Comment noted. 57. Commenters expressed concerns about the

August 13, 2018

58. Commenter observed the current disproportionality in	Comment noted.
suspension and expulsion rates of Black students is a	
contributing factor to the school-to-prison pipeline, a plague	
experienced far too long for the Black community.	
59. Commenter noted that with the passing of HB 1541	Comment noted.
(2016), OSPI has an opportunity to report detailed data that	
will provide community members and parents an	
opportunity to see what is occurring in school buildings, and	
provide data for school leaders to see the behavioral trends	
of their professionals.	
60. Several commenters noted that in passing HB 1541 in	Comment noted.
2016, the Legislature recognized that reducing suspension	
and expulsion and engaging families in student supports are	
crucial to fulfilling the promise of educational excellence and	
opportunity for students. Exclusionary discipline is strongly	
correlated with reduced academic achievement and high	
school graduation rates. It increases the likelihood that	
young people will become involved in the juvenile justice	
system. Exclusionary discipline is associated with negative	
school climate and disconnection to school, even for	
students who have not been suspended or expelled. These	
impacts fall most harshly on students of color (Black, Latinx,	
Native American, Pacific Islander, and multiracial students)	
and students with disabilities, all of whom are	
disproportionately disciplined throughout Washington.	
61. Commenter noted that the school-to-prison pipeline is a	Comment noted.
system of laws, policies, and practices that push students—	
particularly economically disadvantaged students, students	
of color, and students with disabilities—out of schools and	
into the juvenile and criminal systems.	
Commenter observed that data shows alarming trends of an	
overreliance on suspensions, expulsions, and referrals to law	
enforcement as a means of managing student behavior; the	
disproportionate impact of such behaviors on students of	
color, students with disabilities, and other groups; and the	
increased risk of juvenile justice involvement for students	
who are suspended or expelled. The commenter also noted	
that Zero Tolerance policies do not make schools safer.	
62. Commenter stated that the Latino community views	Comment noted.
education as a vital tool to succeed and helps open doors to	
opportunities and every Latino parent wants their children	
to graduate from high school and create a better life.	
Excessive discipline is strongly correlated with low morale	
and attaining academic achievement and seriously impacts	
high school graduation rates. Latino, African- American,	
Native American, Pacific Islander, Multiracial students, and	
students with disabilities are disproportionately disciplined	
throughout Washington.	
63. Commenter observed that students of color—	Comment noted.
particularly black and brown students—are	
•	1

August 13, 2018

Page 17

disproportionately disciplined in Washington schools. "Our black and brown students are brilliant, talented and multifaceted. Yet instead of their genius being nurtured, far too often we see it thwarted when they are excluded from school and set on a path to prison at unacceptable rate."

64. Commenter noted studies demonstrate that students of color are disciplined at a disproportionately higher rate than white students. Higher rates of suspension and expulsions lead to students dropping out of school, having fewer opportunities to work, and having higher rates of incarceration.

The commenter recommended OSPI, in addition to updating the discipline rules, consider using trauma-informed discipline. "Instead of asking 'what's wrong with you?' ask 'what has happened to you? What is wrong in your world?' That enables us to focus interventions on addressing students' unmet needs, which lead to misbehavior. It solves the root cause of behavioral issues."

No action taken. The proposed rules require school districts to attempt or consider "other forms of discipline" before administering suspension or expulsion—which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035. The state menu for behavior developed under RCW 28A.165.035 includes "Trauma-Informed Approaches" as a best practice. According to the "Application" section, the proposed rules also must be construed in a manner consistent with "RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior."

### Implementation of rules

65. Commenter expressed concern that without sufficient time to implement the new rules, administrators may overuse emergency expulsions because the process is easier than providing notice and initial hearings for short-term suspensions. Most administrators and teachers are well meaning and committed to positive behavior supports, but they will continue to follow current rules until there is an opportunity to receive very specific training on new expectations.

The commenter also noted that as long as professional organizations representing administrators believe the regulations are contrary to law, administrators may be hesitant to adopt them.

Action taken. Under the final rules, new school district requirements pertaining to, among other things, suspensions and expulsions and emergency expulsions, and district discipline policies will become effective at the beginning of the 2019–20 school year. OSPI believes this change will provide ample time for school districts to implement new due process procedures, train school personnel, and engage with parents, teachers, and communities for the purpose of developing appropriate local student discipline policies.

The following rules will become effective on July 1, 2019:

- WAC 392-400-025 (Definitions)
- WAC 392-400-110 (Discipline policies and procedures)
- WAC 392-400-430 through 392-400-480 (Suspensions and expulsions)
- WAC 392-400-510 through 392-400-530 (Emergency expulsions)

The following rules will remain effective, as amended, for the 2018–19 school year only:

- WAC 392-400-225 (School district rules defining misconduct—Distribution of rules)
- WAC 392-400-230 (Persons authorized to impose discipline, suspension, or expulsion upon students)

	WAC 392-400-233 (Absences, tardiness, and school meals)  WAC 392-400-235 through 392-400-285 (Discipline, short-term and long-term suspensions, and expulsions)  WAC 392-400-295 through 392-400-305 (Emergency expulsions)  WAC 392-400-310 through 392-400-320 (Long-term suspension and expulsion appeals)  WAC 392-400-410 (Appeal for extension of an expulsion)  OSPI intends to initiate rule-making in early 2019 for the purpose of repealing the foregoing rules effective for the 2018–19 school year before the commencement of the 2019–20 school year.
66. Commenter expressed concerns about how schools will	Action taken. See response to 1-A-65.
be able to effectively communicate these rule changes with	
all staff when they come into effect, while ensuring clarity	
and consistency in their implementation.	
67. Commenter raised concerns about how the timelines	No action taken. OSPI believes the final rules
and expectations in the rules will impact school	fairly balance the new due process and reporting
administrators' time. This may result in administrators	requirements with the need of administrators
devoting less time to improving instructional practice, which	and educators to implement best practices and
is key to decreasing discipline issues in the classroom.	alternatives to exclusions.
Other general comments	
Other general comments  68. Several commenters expressed general support for the	Comment noted.
Other general comments  68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support	Comment noted.
68. Several commenters expressed general support for the	Comment noted.
68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support	Comment noted.
68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:</li> <li>Are more clear, organized, and understandable than</li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> </ul> </li> </ul>	Comment noted.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> </ul>	
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:         <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a</li> </ul>	Comment noted. WAC 392-400-110 and WAC
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make guidance regarding the rules available to the
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more information and resources about student discipline and</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more information and resources about student discipline and special education should be available to parents.</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make guidance regarding the rules available to the public, including in languages other than English.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more information and resources about student discipline and</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make guidance regarding the rules available to the
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more information and resources about student discipline and special education should be available to parents.</li> <li>70. Commenter shared their personal experience as a</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make guidance regarding the rules available to the public, including in languages other than English.
<ul> <li>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules: <ul> <li>Are more clear, organized, and understandable than the former rules;</li> <li>Improve transparency in the discipline process;</li> <li>Encourage culturally responsive practices;</li> <li>Improve family engagement in the development and implementation of discipline policies;</li> <li>Improve equity in the administration of discipline;</li> <li>Provide educational services to students who have been suspended and expelled; and</li> <li>Reduce the use of suspensions and expulsions.</li> </ul> </li> <li>69. Commenter shared their personal experience as a parent of a student who was suspended multiple times. The commenter described their challenges working with the school district and having to pick up their student from school early. The commenter suggested that more information and resources about student discipline and special education should be available to parents.</li> <li>70. Commenter shared their personal experience as a parent of a student who was suspended multiple times in</li> </ul>	Comment noted. WAC 392-400-110 and WAC 392-400-225 require districts to annually provide discipline policies and procedures to students and parents. In addition, OSPI intends to make guidance regarding the rules available to the public, including in languages other than English.

	T
environment at school and they may continue to get in	
trouble because they do not want to be in school.	
71. Commenter expressed concerns about their student's	Comment noted.
school district and an incident with a teacher. The	
commenter observed that students come to school with	
trauma, and some teachers understand that the student is	
not just being defiant, but is experiencing trauma. The	
commenter stated that kids should not have to deal with	
impatient adults.	
72. Commenter noted the proposed rules have a lot of	Comment noted. OSPI has focused these rules on
similarities to higher education codes of conduct. The	the discrete needs of Washington K-12 students,
student populations are different, so different language and	parents, educators, and school administrators.
techniques may be appropriate.	
73. Commenter shared their personal experience as a	Comment noted.
parent of a student who has experienced discipline from a	
young age. The commenter observed that every time their	
student was sent out of the classroom, it affected the	
student's mental health. The commenter stated that their	
children have experienced a lot of loss. "You explain this to	
the teachers, and last year when she had a teacher that	
looked similar to her, it was understandable. Now this year,	
now that we don't have a teacher that looks like her, now it's	
·	
a discipline problem. When it's not, she just needs extra	
supports."	
The commenter also noted that if parents are the first	
teachers, they should be part of the process and decide what	
supports are best for their students.	
supports are best for their students.	
The commenter observed that kids are still failing, and OSPI	
needs to do better.	
74. Commenter shared their personal experience as a foster	Comment noted.
parent and the experiences of students who have been	
placed in in-school suspension or contained rooms instead of	
being helped by school personnel. More support is needed	
for students in schools, not more rules that make it harder	
for school employees to do their job. Schools should spend	
money on counselors to help a child instead of putting them	
in a contained room.	
75. Commenter observed that school leaders should be	Comment noted.
ethical and should be trained in how to approach students	
with discipline issues.	
76. Commenter expressed concern that vulnerable students'	Comment noted.
rights are being overlooked in schools. The commenter	
shared their personal experience of being a parent of	
students with disabilities who have been suspended. They	
noted that parents are not being given information that will	
help them understand their students' rights. The commenter	
also noted that students with disabilities or emotional	
disturbances are disproportionately labelled as	
troublemakers for relatively minor offenses, and the impact	
troublemakers for relatively million offenses, and the impact	<u>L</u>

of lost time in school also hurts students with special needs and students who have experienced trauma disproportionately.	
77. Commenter noted that the proposed rules are clear, concise, and complement the revisions to statute under HB 1541 (2016). Commenter noted that most of what is contained in the proposed rules is already existing law. Commenter observed that school districts did not consistently understand or properly implement the previous rules.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
78. Commenter raised concerns that there has been very little input from current school leaders in how to administer day-to-day operations and disciplinary action. Ambiguous language in the proposed rules will lead to more appeals, misinterpretations, and possible legal action. OSPI should consider delaying the adoption of the proposed rules and work with principals, assistant principals, and current school district attorneys who have to implement the rules.	Action taken. See response to 1-A-65.
79. Several commenters expressed concerns about OSPI's outreach to communities and parents regarding the public hearings on the proposed rules and suggested that OSPI should make the hearings more equitable and accessible for families, particularly communities of color and working families who are unable to attend a hearing during the work day. Commenters recommended holding public hearings in the evening and in multiple locations, including locations closer to public transportation. Another commenter recommended that OSPI provide interpreters at the public hearings.	Comment noted. In response to this comment and other concerns relayed by stakeholders, OSPI held multiple public rulemaking hearings across the state, including hearings in Renton, Tukwila, Yakima, and Spokane.
80. Commenter recommended that OSPI should have included representation from the people being served in the community at the public hearing. The commenter noted it helps make people at ease because they have someone they can connect with.	Comment noted. OSPI drafted the rules with substantial stakeholder input from parents and community representatives. See response to 1-A-79.
81. Commenter recommended OSPI publish a report and hold public hearings regarding the outcome of the public comments on the proposed rules. The report and hearings should be available in Spanish.	Comment noted. This Concise Explanatory Statement has been provided to all of the rule commenters and will be made available on OSPI's public website. OSPI intends to make guidance regarding the rules available to the public in languages other than English, including Spanish.
82. Commenter shared their personal experience as a parent of a student who has severe anxiety, and who, at times, would have inappropriate responses to stressful situations. The commenter stated that the commenter had to beg the school to not suspend her, but was told that the school sometimes just needed a break from students.  The commenter was also told that, unfortunately, the only	Comment noted.
recourse the school had was to deny a student an education.	

Page 21

The commenter said their student cannot comprehend the repercussions of the loss of an education, so this is not an effective punishment.

The commenter stated that they are working with the school district to redraft the discipline code to reduce out-of-school suspensions. The commenter requested that OSPI be detailed in its guidance. All children in our communities deserve the same chances and, without OSPI being detailed and deliberate, children in some communities may be left behind.

83. Commenter expressed general opposition to the proposed rules. Commenter noted, "The rules attempt a one size fits all solution to local problems of inequity in certain school districts."

No action taken. The final rules are intended to establish uniform minimum due process requirements for student discipline in school districts. Under WAC 392-400-110, school districts have broad discretion to adopt written policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with the final rules. WAC 329-400-110(2) requires districts to develop the policies and procedures with the participation of school personnel, students, parents, families, and the community. OSPI anticipates that districts will work closely with these groups and others to develop districtspecific policies addressing local problems of inequity in discipline.

84. Commenter raised concerns regarding vague rule language that creates loopholes and is too open to individual interpretation. For example, what is a threat? How does a school measure danger? What is a cultural consideration? Commenter recommended that the rules use specific language and clear definitions that leave no room for error or mistreatment of students. When left open for interpretation, schools are left with unclear procedures and policies that result in what they typically do, what they feel comfortable with, or what will justify their bad actions.

Action taken. The final rules have been revised to clarify the definition of "culturally responsive." The definition of "culturally responsive" in WAC 392-400-023 (effective for the 2018-19 school year) and WAC 392-400-025 (effective for 2019-20) has been aligned to the meaning of "cultural competency" in the statute governing educator performance standards, RCW 28A.410.270, which includes "knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students."

OSPI does not agree that the terms "threat" or "danger" are vague or ambiguous. Determining when conduct constitutes a threat or danger is highly fact dependent, and OSPI accordingly does not believe it is necessary to adopt regulatory standards or bright-line rules with respect to these terms.

August 13, 2018

85. Commenter noted: "50 Student suicides in our area alone could stop completely if they are treated like customers instead of like criminals."	Comment noted.
86. Commenter expressed concerns about attendance errors, lack of information about curriculum, and schools not meeting Common Core State Standards.	Comment noted.
Commenter also noted that parents repeatedly request information from schools and request increased supervision to decrease bullying and provide basic human rights to public school students.	
87. Commenter noted the legislature directed OSPI to make these changes as a result of grassroots efforts pushed by the public to address a broken discipline system.	Comment noted.
88. Commenter expressed concerns that the proposed rules take away rights students possessed under the previous rules.	No action taken. OSPI believes that the substantive and procedural rights of students under the former rules are retained and strengthened.
89. Commenter noted school district accountability is missing from the rules. If a school district does not follow procedures, there is very little a parent can do about it. More needs to be done.	No action taken. OSPI believes there is no explicit authority under RCW 28A.600.015 for OSPI to enforce these rules. However, OSPI intends to study its authority under other statutes to assess how best the agency can meaningfully encourage or require district compliance.
90. After the rules are adopted, one commenter suggested that OSPI follow up with individual schools to ensure all staff have been trained regarding the new laws. If a school is not in compliance, OSPI should order corrective actions to hold schools accountable. The commenter observed that parents may distrust schools, as they believe this training happens across the board.	Comment noted. See response to 1-A-89.
91. Commenter stated that system change is needed in schools. The commenter observed that there should be creative input from communities, students, and teachers on cultural responsiveness. There should be a standard for all school districts because vagueness leads to subjectivity. The commenter recommended more time was needed to get this right.	Comment noted. See responses to 1-A-83 and 1-A-65.
92. Commenter stressed the importance of professional development and technical assistance to ensure that schools and teachers are set up for success. School staff will need professional development to successfully implement the new rules with fidelity.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
93. Commenter suggested that teacher training programs focus on adverse childhood experiences, de-escalation strategies, and positive behavior supports. Commenter recommended that schools also provide more professional development regarding these topics.	Comment noted.
94. Commenter recommended that OSPI continue to provide school districts support through professional	Comment noted. OSPI intends to provide technical assistance and guidance to assist school

development and additional resources from the state's appropriation.	districts, parents, and advocates in implementing the rules.
95. Commenter suggested that districts with a defined suspension or expulsion rate or disparity be required to write and implement a student discipline improvement plan that would be approved and monitored by OSPI.	No action taken. OSPI believes it is not necessary to add language to these rules that would require school districts to remedy disproportionality in student discipline rates. OSPI's separate antidiscrimination rules provided at WAC 392-190-048 that school districts must 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. OSPI monitors district compliance with this requirement and, where appropriate, can order districts to undertake corrective actions.
96. Commenter recommended increased accountability for principals, teachers, and schools. Principals should be held accountable for school suspensions, especially for younger students. Commenter suggested working with teacher unions to build language into contracts regarding accountability for not utilizing positive supports, best practices, and research-based interventions, and discipline for teachers who continue to send students out, trigger students, or refuse to implement behavior intervention plans.	Comment noted. The final rules are designed to support school districts in gathering and analyzing student discipline data for the purpose of ensuring administrators and teachers use appropriate alternatives to exclusion.
97. Commenter stated it is critical to make these rules clear, concise, and consistent. The commenter noted a change in adult and system behavior is necessary. To ensure the rules are implemented, OSPI should use its authority to provide guidance and technical assistance wherever appropriate and partner with community-based organizations focused on disproportionate discipline, equity, and school climate.	Comment noted. OSPI believes the rules are clearly and concisely written. The agency intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
98. Commenter noted the proposed rules include more limitations and restrictions on school districts. Commenter questioned the role of school board and superintendent if the rules become more restrictive. Commenter also noted that new limitations under the rules will require school districts to spend more money at a time when levies are being cut in half. Commenter observed that it is hard to legislate and regulate the same way from urban school districts to one-room schools.	Comment noted. See response to 1-A-83.
Commenter raised concerns of unfunded mandates and noted they would like to see increased funding in legislation for mental health providers, parent coordinators, counselors, and social workers, as well as secretarial support.	

99. Commenters expressed support that the proposed rules "(i) repeatedly refer schools to OSPI's menu of best practices	Comment noted.
for student behavior; (ii) encourage a holistic evaluation of a student's individual circumstances as well as the behavior	
violation when determining whether to impose discipline;	
(iii) clarify that long-term suspension and expulsion are	
limited to the behavior violations identified by the	
legislation, and only when there is an imminent threat; (iv)	
direct schools to document the behavior interventions other	
than suspension and expulsion considered; and (v) limit the	
most harsh and unnecessary punishments (such as the	
expulsion of early elementary students and suspensions or	
expulsions for absenteeism)."	Comment noted Con response to 1 A 92
100. Commenters suggested that schools and teachers	Comment noted. See response to 1-A-83.
work to fully understand the reasons behind students'	
behavior when responding to students' behavior,	
administering discipline, and developing discipline policies	
and procedures.	
One commenter noted, "Teachers need to fully understand	
the issues that lead to poor behavior and treat the whole	
child, not the on the surface behavior." The commenter	
suggested that each student have a case file, with feedback	
from each employee and volunteer who interacts with the	
student, in order to provide a wraparound solution to	
whatever the student's individual circumstance requires.	
This would take less time away from their peers and allow	
the student to feel successful and have a place at the table.	
the student to reel successful and have a place at the table.	
The commenter noted that OSPI and schools should "think	
very carefully about discipline policies that restrict students'	
ability to learn, like suspension and expulsion; especially in	
the early grades."	
"Please consider the required endgame for each child when	
ruling on how to discipline them. Each child is a complex	
human being in development: they have mental, emotional	
and physical capabilities and drawbacks. They need to be	
considered and encouraged as well as—and rather than—	
coerced into desired behaviors."	
101. Commenters expressed concerns that the proposed	Comment noted. The final rules are intended to
rules would result in additional burdens on teachers and	support school districts in adopting evidence-
would make it harder for teachers to teach. The education	based practices that support students and
system—and the rules—should be more supportive of	teachers in classrooms without unnecessarily
teachers.	excluding students from the opportunity to learn.
102. Several commenters expressed concerns that the	Comment noted. See response to 1-A-101.
proposed rules provide more rights to students who	
misbehave than students who demonstrate appropriate	
school behavior. The rules should also protect students who	
behave, want to be at school, and want to learn. One	
commenter noted: "Children come from many	

108. Commenters recommended that, due to the trauma and transition that often leads to disruptive behavior, homeless and foster youth should receive the same discipline protections, supports, and educational services as students with IEPs.	No action taken. The final rules are designed to prescribe the substantive and procedural due process guarantees of all students in the common schools of the state, and, accordingly, the final rules are intended to establish uniform minimum due process requirements for student discipline in school districts. OSPI believes that
alternative sources of information so parents have free access to information that allows them to fully participate in the process regarding their child.	proposed change is outside the scope of this rulemaking as authorized under RCW 28A.600.015.
think of ways to make the rules more meaningful with specific consequences for schools that do not follow them.  106. Commenter recommended the rules require a school district to document students sent home because of behavior for partial or successive day when it is not documented as a suspension. The commenter suggested that current practice may be to record the removal as "illness" or "parent request."	No action taken. OSPI believes the commenter's proposed change is not necessary because WAC 392-400-330 clarifies that a student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for suspension, expulsion, or emergency expulsion.  No action taken. OSPI believes the commenter's
be. The commenter observed that while the law is clear, parents are still not receiving notice, or parents are not contacted about their student's behavior until they have been long-term suspended. The commenter also suggested that students feel interrogated rather than consulted on behavior, noting the school resource officer is often making accusations.  The commenter expressed concern that even though the law is changing, school practice is not changing. OSPI should	the rules.
105. Commenter shared experiences of parents of students who have been emergency expelled but have not received information about their rights or how long the removal will	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing
choices due to their own issues."  103. Commenter suggested schools have an alternate placement for students who are not ready to learn but need additional support emotionally.  104. Commenters expressed concerns about the power imbalance between schools and students and their families.	Comment noted. The final rules do not preclude school districts from providing tier 1 differentiation in the classroom, delivering tier 2 supplemental services, or offering highly individualized tier 3 academic and behavioral supports for students in need of intensive intervention.  Comment noted.
circumstances and often have emotional issues which stops the learning of other students. When we limit the ability of the teacher or administrator to support the learning of all then we disrupt the learning process of all. Students need to feel safe to learn and when they have to tolerate the negative actions of others it hurts the child's learning. Those children who struggle to make good decisions often have parents who are unable to make positive and healthy	

	1 1100
	additional protections for discrete categories of students, including students in foster care and
	students experiencing homelessness, are outside
	of the scope of these rules.
109. Commenters recommended that, when working with	No action taken. OSPI believes the commenters'
students who are dependents of the State, the student's	proposed change is not necessary because WAC
social worker—in addition to the caregiver—be engaged	392-400-023, WAC 392-400-025, and WAC 392-
early in addressing school behavior issues, as school	172A-01125 provide guardians who are generally
discipline can disrupt foster care placements.	authorized to make educational decisions for the
	student notice and an opportunity to participate
	in disciplinary proceedings under the final rules.
110. Commenters noted that caregivers of students in	Comment noted.
foster care do not have time to appeal discipline decisions.	
Foster parents should never be faced with the decision of	
keeping their jobs or maintaining their placement with their	
children. The commenters recommended social workers be	
engaged early and often. Social workers often know more	
about a student than their foster parents, but they are not	
always called or included in their information system.	
111. Commenter noted that exclusion does not get to the	Comment noted.
root of the problem behind a student's behavior, and it only	
makes things worse. For students in foster care, the	
commenter noted that school inability and placement	
instability are connected. When a student is excluded from	
school, their placement is put in jeopardy. Exclusions add to	
a student's trauma.	
112. Commenter expressed support that the rules	Comment noted.
require that suspensions and expulsions be reported to	
district superintendents and to OSPI, and that data will be	
disaggregated.	
113. Commenter noted that the Council of State	Comment noted.
Governments Justice Center—a national non-partisan	
nonprofit organization that serves policymakers at the local,	
state, and federal levels—found that no studies matched	
statewide individual student data with justice system records	
to shed light on the relationship between school discipline	
and its relationship to juvenile justice.	
114. Commenter expressed concerns about police presence	No action taken. While OSPI agrees that it would
at school. Commenter suggested that schools, not law	be helpful for the agency and other policymakers
enforcement, should deal with students' nonviolent	to better understand how School Resource
behavior, which would reduce the school-to-prison pipeline.	Officers (SROs) are utilized in student disciplinary
The high rate of suspension shows that schools have become	matters, additional student-level data reporting
reliant on juvenile courts and School Resource Officers	categories of the sort the commenter
(SRO). When a school allows an SRO to arrest a student for	recommends here would need to be approved by
nonviolent behavior or refer a student to law enforcement	OSPI's K–12 Data Governance Group under RCW
or juvenile court as a form of discipline, this discourages the	28A.300.042. The K–12 Data Governance Group
student from appreciating education and creates hardship	may also work with the Education Research and
for the student's future due to a juvenile record. The	Data Center (ERDC) to implement potential data
commenter recommended that schools report data to OSPI	elements and data quality improvements in
when an SRO has been called to address a student's	accordance with the procedures under RCW
behavior. Data should include the student's demographics,	43.41.400(2)(d). In addition, OSPI believes new

Page 27

reason for incident, and outcome (e.g., student arrested, statutory changes or additional agency resources referred to juvenile detention). may be necessary to collect data related to SROs. 115. Commenter questioned why data of teachers who Comment noted. OSPI encourages school discipline students is not being collected. "What lens are districts to monitor classroom-based discipline they looking thorough? Maybe those are the ones that need patterns in order to ensure best practices are to be fired because they're not doing their job accurately." implemented in buildings. No action taken. OSPI notes that the final rules 116. Commenter expressed concerns regarding referrals to alternative schools, particularly for students of color. The clarify that suspensions are "a denial of rules should require school districts to report to OSPI any attendance" and expulsions "a denial of student referred to alternative school program, including the admission" that are administered "in response to student's demographics, reason for referral, and graduation a behavioral violation". Accordingly, like the prior rates. OSPI should track the schools or administrators making rules, these rules require school districts to these recommendations. provide notice and process any time a student is referred to an alternative school in response to a behavioral violation. See WAC 392-400-023(9), (16); WAC 392-400-025(7), (14). The final rules also specify at WAC 392-400-430(9) that, if a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, except in limited cases. OSPI intends to consider the feasibility of requiring school districts to report student-level information regarding school district transfers of students in response to behavioral violations. 117. Commenter provided the following suggestions for No action taken. OSPI believes the commenter's integration of the discipline rules with requirements under proposed changes are not necessary because the the Every Student Succeeds Act (ESSA): final rules are consistent with the requirements under ESSA and Washington's ESSA Consolidated School Report Card Plan, which the United States Department of In the community-based report regarding the School Report Education approved on January 16, 2018. Card, which included feedback from over 100 parents and community members, it was clear that parents want schools to report when their children are out of the classroom. Parents need to know how much instruction time students are losing and want it reported by the hour or subject matter. On the school report card, all schools should report when they call law enforcement, including students' ethnicity/race and subgroup. Parents want to see a chart that shows how many suspensions and expulsion are occurring by race/subgroup. Language should be added to the rules to provide districts guidance about what to report. Parent Engagement

Page 28

Through ESSA, each district and school must consult and genuinely engage with parents of color, parent with children with special needs, and parents of LGBTQ students. These groups are disproportionately pushed out of classrooms. The rules should include strong language that reengagement plans must be part of the parent engagement plans.

#### **Needs Assessment**

The rules should provide guidance regarding the needs assessment process, including improving student outcomes by providing new interventions for managing children's social emotional behavior.

School improvement plans should include what interventions the school is using to manage student behavior and what services they provide students when they are suspended or expelled.

Innovative Educational Service providers for children who are already suspended or expelled would not be preventative, but would support the educational journey of children already out of school.

118. Commenter expressed concern that the rules did not mention bullying or harassment. The commenter shared their personal experience as a parent of students who have been harassed at school. The commenter noted that the students who harassed their children were suspended, but it did not seem to solve the problem. "I'd like to see that during suspensions or whatever discipline, kids get some kind of education about what's going on, what the problem is, and how they need to fix it. Possibly pass it on to the parents, get them involved as well, so they understand what the issues are, what the laws are." The commenter recommended OSPI add provisions to address bullying and harassment, and means to deal with it.

119. Commenter noted that the biggest challenge to attendance is the lack of disinfected surfaces. Because children change six classrooms per day, all surfaces should be clean for each student. Schools could add disinfecting wipes to classroom supply lists and ask students to do the wiping. Commenter also noted that schools do not supply toilet seat covers, which would reduce sexually transmitted diseases, Norovirus, and other illnesses.

No action taken. OSPI believes the commenter's proposed changes are outside the scope of these rules, which are intended to provide the substantive and procedural due process guarantees of students in public common schools as authorized under RCW 28A.600.015 and RCW 28A.600.020.

OSPI notes, however, that it has developed model harassment, intimidation, and bullying ("HIB") policies and procedures under RCW 28A.300.285 and adopted rules regarding HIB in WAC 392-190-059.

No action taken. OSPI believes the commenter's proposal is outside the scope of these rules, which are intended to provide the substantive and procedural due process guarantees of students in public common schools as authorized under RCW 28A.600.015 and RCW 28A.600.020.

## 1-B. WAC 392-400-010. Purpose.

Comment Summary	Response
1. Commenters suggested that OSPI clarify that the	Action taken. OSPI agrees with the commenters'
purpose of the chapter is to ensure that schools administer	proposed language in part, and the final rules
discipline in ways that respond to the holistic needs of the	have been amended as follows: "The purpose of
	this chapter is to ensure that school districts in

August 13, 2018

Page 29

Comment Summary	Response
student and support the student in meeting behavioral	Washington: (5) Administer discipline in ways
expectations.	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. Commenter identified a typographic error in the first	Comment noted. OSPI corrected this error in an
paragraph in WAC 392-400-010(6).	earlier proposed draft of the rules.
3. Commenters expressed support that WAC 392-400-010	Comment noted.
provides that the purpose of the rules is to ensure that	
districts implement culturally responsive discipline policies	
and procedures.	
4. Commenter stated they liked the purpose section,	Comment noted.
especially the fairness and equity aspect, as well as the	
"facilitate collaboration" language.	

# 1-C. WAC 392-400-015. Authority.

Comment Summary	Response
No comments.	

## 1-D. WAC 392-400-020. Application.

Comment Summary	Response
Commenter asked whether chapter 392-400 WAC applies to public charter schools.	Comment noted. RCW 28A.600.015(1) authorizes OSPI to adopt "and distribute to all school districts" rules "prescribing the substantive and procedural due process guarantees of pupils in the common schools." (Emphasis added.) Charter schools are not common schools. See League of Women Voters of Wash. v. State, 184 Wn.2d 393, 355 P.3d 1131 (2015). Accordingly, the final rules do not impose any specific requirements on charter public schools. However, OSPI believes that chapter 392-400 WAC may be made applicable to charter public schools in a school's charter contract with a charter authorizer under RCW 28A.710.040.
2. Commenters recommended WAC 392-400-020(1) be amended as follows: "This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts."      3. Commenters recommended WAC 392-400-020(2)(d) be	Action taken. OSPI agrees with the commenter's proposed clarification and added the language to an earlier proposed draft of the rules.  Action taken. OSPI agrees with a portion of the
amended as follows: "WAC 392-172A-05140 through 392-172A-05175, 20 U.S.C. 615, and 34 C.F.R. 300.530 through 300.536 regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act."	commenter's proposed clarification and added the language to an earlier proposed draft of the rules.

## 1-E. WAC 392-400-025. Definitions.

Comment Summary	Response
"Classroom exclusion"	
1. Commenter stated that the definitions of classroom exclusion and suspension do not fit in the elementary context, noting it is contrary to RCW 28A.600.020(2), which allows a teacher to exclude a student from their classroom for all or any portion of the balance of the school day. The commenter recommended the definitions for suspension and other forms of discipline add " in the case of elementary students, does not exceed the balance of the school day."	Action taken. OSPI agrees that earlier proposed drafts of the rules did not fully take into account the unique circumstances regarding the exclusion of elementary school students from classes or subjects in response to behavioral violations. The final rules accordingly clarify at WAC 392-400-330(3) that school districts must provide notice and due process for a suspension, expulsion, or emergency expulsion when (1) a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day or (2) when a student is removed from school during a classroom exclusion.
"Cultural Responsive"	
2. Several commenters recommended that the rules define "culturally responsive" or "culturally responsive discipline."  One commenter recommended that the term "culturally responsive" be defined as "using cultural knowledge, prior experiences, frames of reference and performance styles of racially diverse students, particularly black and brown students, to make learning environments relevant to and effective for them." The commenter noted that this definition draws on the expertise of Dr. Geneva Gay, University of Washington Professor of Education and authority on multicultural and culturally responsive teaching. Providing a baseline definition will allow districts and schools to build on and further define cultural responsiveness for their particular communities in consultation with students, parents and families.	Action taken. See response to 1-A-84.
3. Commenter noted that "culturally responsive" is hard to define. The commenter shared an example of challenges related to disciplining a student at school for using language that is inappropriate at school but is culturally acceptable in the student's home.	Comment noted.
"Discipline"	
4. Commenter expressed concerns that the proposed rules replace the term "corrective action" with "discipline." Commenter noted that "discipline" is commonly understood and translated to mean "punishment." Commenter noted: "The language used in session law alerted families that there are options to punishment that can be considered. Given the disproportionate punishment of students receiving special education services, and the impact alternative action such as de-escalation or positive behavior intervention and support can have in preventing avoidable behavior situations, we think this distinction is important and that language in rules should adhere to the language legislators chose for session law." Commenter noted concern that "families will not be	No action taken. OSPI disagrees that the term "discipline" is commonly understood to mean "punishment". Among other things, the purpose of the final rules to ensure that school districts 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. See WAC 392-400-010. OSPI believes that using discipline to "punish" students is not consistent with that purpose. The final rules therefore intentionally define "discipline" starting in 2019 to include a range of

August 13, 2018

Page 31

Comment Summary	Response
aware of optional, preventive actions, and will assume the practice of removing students to isolated learning	school district actions—including exclusionary discipline such as suspensions and expulsions
environments is the only option to suspension, thus exacerbating the segregation students with developmental disabilities already face."	when the student's presence poses an immediate and continuing danger or threat of material and substantial disruption of the educational process,
Commenter recommends using the term "action" to clarify that schools choose how they will interact with students, including those with adaptive or behavior differences due to	as well as best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035, such as "De-Escalation" strategies and other positive discipline strategies.
disability or trauma.  5. Commenters noted that the definition of "discipline" is too broad and might encompass actions that teachers and administrators take daily in response to behavioral violations, such as standing closer to a student who is disruptive, changing a student's seating assignment, engaging a student in a more interesting assignment that meets the student's particular needs. The purpose of these proven de-escalation strategies is to enhance learning, not interfere with it. Commenter suggested the following definition: "Discipline means any punitive action taken by a school district, in response to behavioral violations, that	No action taken. See response to 1-E-4.
might interfere with a student's learning."  6. Commenter stated the term "discipline" is defined too broadly. The commenter recommended "any corrective action taken by a school district in response to behavioral violations." Adding the word "corrective" limits the universe of actions to those which are more commonly thought of as helpful in counteracting misbehavior.	No action taken. See response to 1-E-4.
"Emergency Expulsion"	
7. Commenters recommend removing language from WAC 392-400-025, WAC 392-400-510, and WAC 392-400-515 that allows emergency expulsion for "immediate and continuing threat of material and substantial disruption of the educational process." This language does not meet the standard set by HB 1541 that students may not be long-term suspended or expelled for "discretionary discipline." "Disruption of the educational process" as defined in the proposed rule would be a discretionary offense and not qualify as one of the behavioral violations included in HB 1541 for which a student may be expelled.	Action taken. OSPI does not agree with the commenter's suggestion that the language they have identified is inconsistent with the provisions in 4SHB 1541 (2016). The "discretionary discipline" limitations introduced with 4SHB 1541 and codified at RCW 28A.500.015 apply by the statute's terms to disciplinary actions taken by a school district for student behavior that violates a district discipline policy. In those cases, predeprivation due process must be afforded to students. Emergency expulsions, however, are the temporary removal of a student from school due to an immediate and continuing danger or threat, when "prior notice and hearing cannot be insisted upon." Goss v. Lopez, 419 U.S. 565, 582 (1975). "Students whose presence poses a

continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as

Commenters noted that at least one school district has

### **Comment Summary** Response practicable..."). Id., 419 U.S. at 582-83 (1975). Like these final rules, OSPI's prior rules—which remained in effect following the passage of 4SHB 1541 in 2016—recognized that emergency expulsions may be warranted when a student poses a threat of material and substantial disruption of the educational process. However, OSPI shares the commenter's concern that the "threat of material and substantial disruption of the educational process" standard is imprecise and could lead to uneven and potentially disparate applications of the rule. Accordingly, OSPI has amended the final rule to provide that, beginning in 2019, "an immediate and continuing threat of material and substantial disruption of the educational process" for purposes of determining if an emergency expulsion is warranted means (1) 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 (2) school personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations. "Individual Circumstances" 8. Commenters recommended adding a definition of No action taken. OSPI believes that adding a "individual circumstances" to be considered when definition for "individual circumstances" or administering student discipline to ensure that schools including a standardized list of individual circumstances would be unduly restrictive and consider factors that may have contributed to behavior violations and may influence other forms of discipline or could risk unintentional omissions. strategies to productively reengage the student in school. Commenters recommended adding a standardized list of OSPI shares the commenter's concerns that individual circumstances to reduce subjective or inconsistent discretionary standards can lead to uneven and consideration of student circumstances that could potentially disparate application of rules. exacerbate racial disparities. Accordingly, WAC 392-400-225(1)(c) and WAC 392-190-048 require school districts to annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency, and disability. "Length of an academic term" 9. Commenters raised concerns regarding the definition of Action taken. The final rules expressly clarify that "length of an academic term" in WAC 392-400-025. "length of an academic term" means "the total Commenters observed that students have been told they are number of school days in a single trimester or suspended for the balance of the school year because the semester, as defined by the school board." school district apparently defined "academic term," for the purposes of an expulsion, as one full school year.

Comment Summary	Response
published a procedure explicitly defining an academic term as 180 school days. This is contrary to the intent of HB 1541, which shortened the duration of expulsion from one calendar year to one "academic term." Because the proposed definition in WAC 392-400-025 does not preclude this practice, commenters recommend that OSPI clarify that an academic term is a subset of the academic calendar and cannot equal an entire school year.	Response
"Other forms of discipline"	
10. Several commenters suggested revising the definition of "other forms of discipline." One comment recommended that the definition explicitly include only non-exclusionary discipline and mandate the use of best practices in the state menu for behavior developed under RCW 28A.165.035.	No action taken. OSPI believes the commenter's proposed change is unnecessary because the final rules specify at WAC 392-400-023(5) and WAC 392-400-025(9) that 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. The menu of best practices for behavior provides details and is updated annually in accordance with RCW 28A.165.035. In addition, WAC 392-400-020(2)(e) provide that the rules must be construed in a manner consistent with RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior.
11. Commenters recommended the definition for "other forms of discipline" be amended as follows: "'Other forms of non-exclusionary discipline' means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which must may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035. Other forms of discipline include any denial of attendance or classroom exclusion that does not exceed the balance of the immediate subject or class period."	No action taken. OSPI believes the commenters' proposed change is not necessary. First, WAC 392-400-110(1)(e) require school districts to adopt policies and procedures that 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 behavioral expectations. Other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior.  Second, consistent with RCW 28A.600.020(2), the final rules require school districts to first attempt one or more other forms of discipline to support the student in meeting behavioral expectations before administering classroom exclusion, short-term suspension, or in-school suspension. See WAC 392-400-330, WAC 392-400-435. And consistent with RCW 28A.600.015(7), the final rules require school districts to consider other forms of discipline to support the student in meeting behavioral expectations before

August 13, 2018

Page 34

Comment Summary	Response
12. Commenter expressed support for the emphasis on	No action taken. See response to 1-E-11.
other forms of discipline but recommended they be spelled	
out in more detail in the rules.	
13. Commenter asked whether RCW 28A.165.035 is the	No action taken. OSPI believes the proposed
correct citation for references to best practices and	rules correctly references the state menu for
strategies included in the state menu for behavior. The	behavior developed under RCW 28A.165.035,
commenter also asked if the state has a list of best practices	which includes "De-Escalation" as a best practice.
regarding behavior interventions or de-escalation strategies.	
14. Commenter stated the term "other forms of discipline"	Action taken. OSPI agrees that the language the
appears to be inconsistent with the procedure for	commenter cites is inconsistent. Accordingly,
administering classroom exclusions, noting that the class	WAC 392-400-025 in the final rules does not
room exclusion rule requires teachers to first attempt one or	provide that other forms of discipline include any
more "other forms of discipline" before excluding a student	denial of attendance or classroom exclusion.
from the classroom.	
"Short-term Suspension"	
15. Commenters recommend redefining short-term	No action taken. RCW 28A.600.015(2) expressly
suspensions as exclusions up to five (rather than ten)	provides that short-term suspension procedures
consecutive school days, and long-term suspensions as	"may be used for suspensions of students up to
exclusions of more than five (rather than ten) consecutive	and including, ten consecutive school days."
days.	Accordingly, OSPI does not believe it has the
	statutory authority to limit short-term
	suspensions to a period less than 10 consecutive
	days.

## 1-F. WAC 392-400-110. Discipline policies and procedures—Development, review, and distribution.

Comment Summary	Response
1. Commenter suggested that school districts use reflective	No action taken. See response to 1-A-83.
and open practices when developing and reviewing	
discipline policies. The rules should encourage school	
districts to invite conversations that bring together those	
most directly impacted by the policies with those charged	
with their implementation. Districts should be encouraged to	
engage in reflective practices that can help illuminate how	
unspoken cultural norms of a dominant group may create	
barriers for students and families with different cultural	
backgrounds and how to eliminate those barriers.	
2. Several commenters suggested that the rules better	No action taken. OSPI disagrees with the
clarify the requirements regarding a grievance procedure for	commenter's suggestion that more clarity is
"other forms of discipline." One commenter expressed	necessary with respect to the grievance
concerns that the proposed rules would allow a student or	procedure required under WAC 392-400-110(1)
parent to grieve any action that results from misconduct,	(h). The prior rules required districts to adopt a
which would be inefficient, unfocused, and micromanage	grievance procedure for "discipline"—which was
what professional educators do in the classroom every day.	defined at the former WAC 392-400-205(1) as
Under the proposed rules, the commenter noted that, "a	including all forms of corrective action other than
student could grieve when a teacher asks her to 'be quiet'	emergency removal from a class, subject, or
during class. And a second-grade student who is asked to	activity, suspension, or expulsion and shall
behave 14 times throughout the day could initiate 14	include the exclusion of a student from a class by
separate grievances the next morning."	a teacher or administrator for a period of time
	not exceeding the balance of the immediate class

Comment Summary	Response
	period. Similarly, and in accordance with the agency's rulemaking authority under RCW 28A.600.015, OSPI believes a grievance procedure related to the administration of other forms of discipline should remain in place to maintain and adequately protect students' interests. Unlike the current rules, which prescribe a grievance procedure at the building, district, and school board levels with specific timelines and other mandates, the final rules are intended to allow districts greater flexibility to establish local grievance procedures that meet the district's unique needs, so long as, at a minimum, they include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation. See WAC 392-400-110(1)(h).
3. Commenter stated there is no need to provide students with grievance procedures for minor forms of discipline. The commenter noted that students would be able to use this process for every corrective action, including those as simple as a redirect from a teacher. The commenter recommended OSPI delete the requirement in WAC 392-400-110(1)(h).	No action taken. See response to 1-F-2.
4. Commenter expressed concerns that, for students whose only viable option for getting to school is the school bus, the current proposed rules may not offer sufficient due process protection to ensure that their access to school is not unduly restricted or removed. In the current proposed rules (WAC 392- 400-110(1)(h)), each district would have discretion to define due process procedures for exclusions from transportation. It can be unclear to families who is responsible for making decisions relating to discipline on the school bus and how to appeal proposed disciplinary actions.	No action taken. OSPI believes the final rules provide adequate due process protections with respect to student transportation. The final rules require districts to establish grievance procedures for discipline that excludes a student from transportation that at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation. See WAC 392-400-110(1)(h). To the extent that a district excludes a student from transportation as a condition of a suspension or expulsion, OSPI believes the rules' due process procedures for suspension or expulsion would apply.
5. Commenter recommended including exclusions from school district transportation in the types of disciplinary actions that would trigger the defined due process protections outlined for short and long-term suspensions, and emergency and other expulsions.	No action taken. See response to 1-F-4.
6. Commenters recommended WAC 392-400-110(1)(g) be amended as follows: "Establish appeal and review procedures for protecting the due process rights of students and resolving disagreements related to the administration of suspensions, expulsions, and emergency expulsions, consistent with WAC 392-400-430 through 392-400-525."	No action taken. OSPI does not believe the commenter's proposed change is necessary because rule's subsequent reference to WAC 392-400-430 through 392-400-525 clarifies that the appeal and review procedures are for the purpose of protecting students' due process rights.

Comment Summary	Response
7. Commenters recommended that OSPI clarify the	Action taken. The final rules are intended to be
proposed requirement that school districts make "every	consistent with RCW 28A.600.020(3), which
reasonable attempt" to involve parents in the resolution of	requires districts to adopt discipline procedures
student discipline problems. One commenter expressed	providing that teachers and school
concerns that a school district will be unsure what actions	administrators "make every reasonable attempt
they must take to take to meet this standard. The	to involve the parent or guardian and the student
commenter noted: "For example, we are not sure if multiple	in the resolution of student discipline problems."
phone calls attempting to reach the parent would meet this	In response to the commenter's concern, OSPI
requirement, or whether we must also send materials home	has revised the rules to clarify what actions
via U.S. mail. We are also not sure if the District must	<u>-</u>
	school districts must take starting in 2019 to provide increased opportunities for parent
accommodate a parent's demand that disciplinary meetings	1 '
can only occur after 7pm (when the parent gets off work).	participation during an initial hearing with the
Lack of clarity with such an ambiguous standard would put	student. See WAC 392-400-450.
us in a position where we must defend (in the four appeal	
procedures) whether two or three phone calls were	
sufficient."	
8. Commenter expressed concerns that school district	No action taken. See response to 1-A-48.
policies and procedures may not take into account the	
cultural norms of the migratory lifestyle that could affect	
student behavior in the classroom or school (e.g.,	
overcrowding in the home, frequent and repeated moves,	
uncertainty where next home will be). The commenter	
recommended that policies and procedures include required	
training for all school district personnel to build	
understanding of the culture of migrant students. This	
training is needed to generate culturally responsive	
approaches and to ensure fairness and equity in the	
administration of discipline.	
9. Commenter expressed appreciation for the inclusion of	Comment noted.
students, families and community in the discussion on	
developing and implementing discipline policy.	
10. Commenter expressed appreciation for the proposed	Comment noted.
rules requiring school districts to develop policies that	
provide for the early involvement of in resolving discipline	
problems.	
11. Commenter opposed the development and review	Comment noted.
requirement in WAC 392-400-110(2), noting that while it is a	
good idea, families and communities tend to want more	
suspensions for more behaviors, not fewer.	
12. Commenter recommended OSPI further clarify the	No action taken. OSPI believes the commenter's
requirement that a school district must annually provide the	proposed change is not necessary because the
district's discipline policies and procedures. The commenter	final rules do not require districts to print copies
noted that their school district's discipline procedure is 19	of their discipline policies and procedures for
pages, and schools can afford to print a copy for every	every individual, nor do they prevent a district
student and employee. The commenter asked whether the	from doing so. The final rules allow districts
policy and procedure could be provided on the school	flexibility to determine how best to disseminate
district's website.	discipline policies and procedures in a manner
S.S. S. S. Webbite.	consistent with the statutory requirement under
	RCW 28A.320.211(1).
	NCVV 20M.32U.ZII(I).

August 13, 2018

Comment Summary	Response
13. Commenter recommended OSPI clarify what "early involvement of parents" means.	No action taken. OSPI believes it is not necessary to define "early involvement of parents" because of the multiple variables that may inform what early involvement looks like for diverse families.
14. Commenters recommended school districts must annually, not periodically, review discipline policies and procedures.	No action taken. OSPI believes imposing a prescribed schedule on school district review of discipline policies does not meet the varied and discrete needs of Washington's school districts and would be unduly burdensome. Moreover, districts are required to annually review disaggregated discipline data to identify and address any disproportionality in their administration of discipline. OSPI anticipates that districts will revise policies and procedures when necessary as a result of these reviews.
15. Commenter recommended OSPI define "reasonable," in relation to "every reasonable attempt to involve parents." How will it be uniform across all school districts?	No action taken. OSPI believes that, when it comes to parent involvement, what is determined as "reasonable" may vary according to family circumstances and needs. Determining when parent engagement is reasonable is fact dependent, and OSPI believes that overly prescriptive standards or bright-line rules with respect to this issue are unlikely to lead to effective district practices.  In addition, OSPI believes the commenter's proposal is unnecessary because several current laws—including RCW 28A.165.035 (regarding the state menu of best practices and strategies for behavior, which includes "Family Engagement" as a best practice), RCW 28A.415.410 (regarding training to support school personnel in implementing discipline policies and procedures), and RCW 28A.415.420 (regarding educators gaining knowledge and skills in cultural competence)—emphasize family engagement strategies and the importance of parent and family engagement. Under WAC 392-400-020, these final discipline rules must be construed in a manner consistent with those laws, among
16. Commenter questioned whether the outcome of a school district identifying other forms of discipline in the school district policy and procedure will result in a reduction in disciplinary actions that will be used to show the schools and districts have fewer issues to make the system look better.	others.  Comment noted.
17. Commenter suggested OSPI clarify whether a student who is expelled could ever be readmitted.	Action taken. OSPI has revised WAC 392-400-430(9) to clarify that, when a school district enrolls a student in another program or course of

Comment Summary	Response
	study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, except in limited cases. This revision is consistent with RCW 28A.600.015(1), which provides that a suspension or expulsion may not be for an indefinite period of time; RCW 28A.600.020(6), which provides that a suspension or expulsion must have an end date of not more than the length of an academic term; and RCW 28A.600.022(3), which provides that a suspended or expelled student may petition for readmission.
18. Commenter suggested OSPI clarify whether each school district must create a review committee containing school personnel, students, parents, families, and the community. How will this occur and when?	No action taken. Consistent with RCW 28A.320.211 and RCW 28A.600.020(3), the final rules require school districts to develop and periodically review discipline policies and procedures with the participation of school personnel, students, parents, families, and the community. See WAC 392-400-110(2). OSPI believes districts have broad discretion regarding how often they review these policies and how the review process is governed.
19. Commenter noted that the requirement that a school district update their discipline policy and procedure to improve fairness and equity in the administration of discipline implies that discipline is disproportionately dispensed to certain groups unfairly. "Thus this starts with an inherent built-in bias which will lead to 'not' disciplining so that the districts and administration aren't accused of bias."	Comment noted.
20. Commenter expressed support for language that requires a school district to develop and periodically review discipline policies and procedures with the participation of school district personnel, students, parents, families, and the community. The commenter recommended OSPI recognize there should be guidance to districts affirming core values around true family and community engagement in that process. The commenter shared their personal experience, noting that they have not seen authentic engagement of the families most impacted by these issues when this process takes place.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts in implementing the rules, including guidance regarding family engagement strategies and the importance of family and community engagement.

## 1-G. WAC 392-400-330. Classroom exclusions—Conditions and limitations.

Comment Summary	Response
1. Commenter noted that the requirement in WAC 392-	Comment noted. WAC 392-400-330 is consistent
400-330 for teachers to "first attempt one or more other	with RCW 28A.600.020(2), which provides that,
forms of discipline to support the student in meeting	with the exception of emergency circumstances,

August 13, 2018

Comment Summary	Response
behavioral expectations" has collective bargaining	teachers first must attempt one or more
ramifications for many school districts. Commenter noted	alternative forms of corrective action before
that language regarding classroom exclusions is included in	administering a classroom exclusion.
many collective bargaining agreements.	
2. Commenter expressed concerns that a classroom	Action taken. See response to 1-E-14.
exclusion, which is a first attempt to support students in	·
meeting behavioral expectations, is considered a "form of	
discipline," rather than engagement or other positive effort	
to resolve the behavioral conflict. Starting from a discipline	
perspective, the teacher or other school personnel may miss	
the context or request for assistance a student could be	
communicating through their behavior.	
3. Commenter recommended that the rules more clearly	No action taken. See response to 1-A-6.
integrate the role of behavior intervention plans (BIP) in	
managing student behavior. WAC 392-400-330 should	
specify that if a student receiving special education services	
has a BIP that addresses the type of behavior potentially	
exposing the student to classroom exclusion, the teacher	
must employ the strategies outlined in the BIP. Further, the	
rule should state that if a student with a BIP is excluded from	
the classroom, the IEP team should consider whether the BIP	
is working, is being implemented appropriately, or is in need	
of change, as well as whether the student needs a new	
functional behavioral assessment.	
4. Commenter shared their personal experience as a parent	Comment noted. Starting in the 2018–19 school
of a student with disabilities who was often sent home for	year, the final rules require school districts to
refusing to listen to teachers' prompts. The commenter	notify a student's parents regarding classroom
noted these removals were not counted as suspensions, but	exclusion of the student as soon as reasonably
were documented as "parent requests to be sent home."	possible and in a language the parents
The commenter observed the student is no longer connected	understand. The final rules further provide that
to school, peers, or the learning environment.	when a student is excluded from the student's
	classroom or instructional or activity area for
The commenter also noted they have no idea how to	longer than the balance of the school day or
account for the time their student spent outside the	removed from school during a classroom
classroom. "There have been days, especially in elementary	exclusion, the exclusion must be administered as
school, where I would go to pick him up and learned he had	a suspension, expulsion, or emergency expulsion,
been in the principal's office all day already, and he was	and parents must receive appropriate notice of
being sent home from the principal's office for acting out in	the disciplinary action. See WAC 392-400-330(3).
the principal's office. That was my only notice of in-school	
suspension."	
The commenter suggested that notification of in-school	
suspensions is going to help inform parents of problems or	
patterns of behavior so they can work as a team to address	
it.	
5. Commenter stated that a student told them their	Comment noted. Starting in the 2018–19
teacher had an "only English" policy in the classroom, and	school year, the final rules require school
the teacher had excluded students from class for explaining	districts to notify a student's parents regarding
things to each other in Spanish. The commenter noted it is	classroom exclusion of the student as soon as
unclear how this type of removal is documented and what a	reasonably

August 13, 2018

Page 40

Comment Summary	Response
student is supposed to do in that circumstance. Commenter	possible and in a language the parents
also questioned whether it is okay to have an "only English"	understand.
policy in the classroom.	
	In addition, OSPI notes that classroom exclusions
	and all other district disciplinary actions must not
	discriminate against students based upon, among
	other things, a student's race or national origin.
	See RCW 28A.642.010.
6. Commenter suggested that the requirement that a	No action taken. See response to 1-B-4.
teacher must first attempt one or more other forms of	
discipline to support the student in meeting behavioral	
expectations before administering a classroom exclusion is	
confrontational. The commenter noted that meeting	
expectations does not have to happen within a discipline	
setting. Rather than assuming that discipline is the right	
path, the commenter identified there are other positive	
ways that teachers can proactively correct behavior with the	
student, parents, and others.	
7. Commenter suggested that classroom exclusions and	Comment noted.
informal suspensions are huge issues for students with	
disabilities. Parents routinely have to pick up their kids from	
school without data collection or formal due process. This	
has multiple impacts on families, including lost jobs and	
economic impacts. The commenter noted that behavior is a	
form of communication—if we don't recognize patterns of	
behavior, we are letting students down. When data is not	
collected, it's not being used to ensure schools are providing	
a free, appropriate public education to students with	
disabilities.	

#### 1-H. WAC 392-400-335. Classroom exclusions—Notice and procedure.

Comment Summary	Response
1. Commenters expressed support regarding the proposed	Comment noted.
rules for classroom exclusions, including that the proposed	
rules provide clarity regarding how schools should address	
classroom exclusions and informal suspensions. "As drafted,	
the rules will ensure that school administrators respond to	
classroom exclusion in a timely fashion, parents are notified	
about classroom exclusion, and exclusions longer than the	
balance of a subject or class period are treated as	
suspension."	
Parent Notice	
2. Several commenters expressed support for the	Comment noted.
requirement in WAC 392-400-335 to notify a student's	
parents regarding a classroom exclusion.	
3. Commenter suggested that OSPI clarify whether WAC	Action taken. OSPI agrees with commenters that
392-400-335(4) applies to classroom exclusions under	requirement under proposed WAC 392-400-
WAC 392-400-330 or to short and long-term suspensions	335(4) for principals to report "classroom
and expulsions under WAC 392-430-480.	exclusions" to school districts' superintendents

Comment Summary	Response
	could be confusing and appear unduly
	burdensome to school district personnel. OSPI
	has accordingly stricken this language from the
	final rule.
	This raice
	OSPI notes, however, that "classroom exclusion"
	has been added as a valid value in the statewide
	longitudinal education data system, CEDARS, for
	the upcoming school year in accordance with
	RCW 28A.300.042 and RCW 28A.300.507. School
	districts, therefore, must develop internal
	reporting procedures to ensure that classroom
	exclusions administered under these final rules
	are accurately reported in CEDARS for the 2018–
	19 school year.
4. Commenter noted that the timing regarding parent	Action taken. OSPI agrees that the proposed
notice in WAC 392-400-335 is ambiguous. The proposed	notice requirements in WAC 392-400-335
rules require parent notice "as soon as reasonably possible,"	appeared to conflict. The final rule therefore
but require the principal and teacher confer "as soon as	provides that notifications of classroom
reasonably possible and no later than the start of the	exclusions to principals and parents must be "as
following school day." For consistent, clear, and timely	soon as reasonably possible."
notice, commenter recommended that the rules require	
parent notice be provided: "as soon as reasonably possible	
and no later than the start of the following school day."	
5. Commenter recommended that schools notify parents of	Action taken. See response to 1-H-4.
any and all exclusions from the classroom. Commenter	
expressed concerns about situations in which schools only	
notified parents after several exclusions had already	
occurred.	Action tolon Consumer to 4 C 2
6. Commenters suggested that any loss of instruction be	Action taken. See response to 1-G-2.
treated as exclusionary discipline and be subject to the same	
<ul><li>types of communication and limitations as suspension.</li><li>7. Commenter recommended that the rules should require</li></ul>	Action taken. See response to 1-H-4.
school districts to provide more detailed notices regarding	Action taken: See response to 1-n-4.
classroom exclusions.	
Data	
Several commenters expressed concerns that schools	Action taken. OSPI agrees with commenters that
use informal exclusions, such as classroom exclusions,	the rules should provide clearer limitations and
requests for parents to pick up their children due to	reporting requirements for the types of
behavior, and informal suspensions. Commenters observed	exclusions identified by the commenters.
that such informal actions go unreported, which limits	Therefore, starting in the 2018–19 school year,
efforts to target supports and interventions, undermines	the final rules require school districts to notify a
efforts to identify and address disproportionate discipline,	student's parents regarding classroom exclusion
undercuts student learning, and undermines parent efforts	of the student as soon as reasonably possible and
to address incidents using legal mechanisms such as the	in a language the parents understand. The final
Individuals with Disabilities Education Act.	rules further provide that when a student is
marriadas with Disabilities Eddeation Act.	excluded from the student's classroom or
	instructional or activity area for longer than the
	balance of the school day or removed from
	school during a classroom exclusion, the

Comment Summary	Response
Comment Juninary	exclusion must be administered as a suspension,
	expulsion, or emergency expulsion, and parents
	must receive appropriate notice of the
	disciplinary action. See WAC 392-400-330(3).
	disciplinary decisin. See Wite 332 400 330(3).
	In addition, "classroom exclusion" has been
	added as a valid value in the statewide
	longitudinal education data system, CEDARS, for
	the upcoming school year in accordance with
	RCW 28A.300.042 and RCW 28A.300.507. School
	districts, therefore, must develop internal
	reporting procedures to ensure that classroom
	exclusions administered under these final rules
	are accurately reported in CEDARS for the 2018–
	19 school year.
Several commenters recommended that OSPI require	Action taken. See response to 1-H-3.
districts to collect and report data regarding classroom	Action taken occ response to 1 11 3.
exclusions. Commenters noted that robust and reliable data	
regarding classroom exclusions and informal suspensions	
would assist schools in targeting early interventions and	
help address truancy and loss of instruction.	
10. Commenters recommended that the rules require school	Action taken. See response to 1-H-3.
administrators to report classroom exclusion to the	
superintendent.	
Conference Between Teacher and Principal/Designee	Astiss taken OCD assessment to
11. Commenter recommended that the rules clarify the	Action taken. OSPI agrees with the commenter
means by which the principal or designee and the teachers should confer under WAC 392-400-335. As proposed, it is	that the proposed language requiring conferral between the principal and teacher was confusing
unclear whether the rules would require that principals	and difficult to implement. The final rules
and teachers confer face-to-face, by email, or by other	•
•	therefore omit this requirement
means.	therefore omit this requirement.
means.	·
means.	The language in the final rules is not inconsistent with the statutory provision under RCW
means.	The language in the final rules is not inconsistent
means.	The language in the final rules is not inconsistent with the statutory provision under RCW
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that,
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations
means.	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining
	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district.
12. Several commenters noted that the proposed	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining
12. Several commenters noted that the proposed requirement in WAC 392-400-335 that the principal or	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district.
12. Several commenters noted that the proposed requirement in WAC 392-400-335 that the principal or designee confer with the teacher regarding the classroom	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district.
12. Several commenters noted that the proposed requirement in WAC 392-400-335 that the principal or	The language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district.

Comment Summary	Response
or any portion of the balance of the school day, or up to the	
following two days, or until the principal or designee and	
teacher have conferred, whichever occurs first."	
One commenter noted that many school districts have	
adopted collective bargaining agreements with teacher	
unions that directly quote RCW 28A.600.020. Teachers and	
teacher unions often believe they have the right to exclude	
students from a classroom for up to two school days. Under	
the proposed rules, school districts might receive grievances	
from their teachers union asserting that statutory language	
trumps regulatory language.	
13. Commenters suggested that the proposed WAC 392-400-	Action taken. See response to 1-H-11.
335 shrinks the RCW definition. "The reference to conferring	
in the RCW pertained to a definition of classroom exclusion	
which included the two days following the day in which the	
infraction occurred. The proposed WAC language, ignores	
the RCW and turns those days into a 'suspension.' Thus, the	
provisions of a suspension come into play, leaving for all	
practical purposes a classroom exclusion to be limited to the	
remainder of that class period or day." The commenters	
noted that under this definition, it is unreasonable and	
unnecessary to require a conference between the principal	
and teacher for every exclusion.	
Commenters proposed that WAC 392-400-335(2) be	
reworded as follows: "The teacher must notify the principal	
or designee of any classroom exclusion which meets the	
definitionof discipline no later than the end of the	
following school day."	
14. Commenter expressed concerns that if a principal or	Action taken. See response to 1-H-11.
designee is not immediately available, students may be	
excluded from class for two days, especially if the	
administrator is absent, or attending a meeting. "A student	
may find themselves being excluded, and it puts things in a	
grey area of them not having that initial hearing that's	
complicated in the new WACs for a suspension because by	
then, they are removed for more than one class period and	
more than one subject, and a teacher asserting the right to	
remove the student for more than two days."	to Cubin to a Class Dail
Classroom Exclusions that Exceed the Balance of the Immedia	-
15. Several commenters raised concerns regarding the	Action taken. OSPI agrees that proposed rules'
proposed language in WAC 392-400-330(4). Commenters	initial requirements governing due process
noted that the language is unclear and overbroad—	related to classroom exclusions were confusing
particularly with respect to elementary schools or schools	and would likely be difficult to uniformly
with unique schedules—and may include, for example, a	implement. The final rules therefore provide that
teacher switching subjects after asking a student to sit	when a student is excluded from the student's
outside the room for a short period of time to calm down or	classroom or instructional or activity area for
sending a student out of the classroom for the last five	longer than the balance of the school day or
minutes of the class. Commenters noted that such situations	removed from school during a classroom

August 13, 2018

Page 44

Comment Summary	Response
are a daily occurrence and should not trigger notice and due process for suspension. Commenters also noted that, as proposed, the rules would hamper a teacher's classroom management, create a disincentive for best practices and restorative responses to student behavior, and will increase the number of suspensions.	exclusion, the exclusion must be administered as a suspension, expulsion, or emergency expulsion, and students must receive appropriate due process. See WAC 392-400-330(3).  In addition, OSPI has revised the definition of "classroom exclusion" in WAC 392-400-023 and WAC 392-400-025 to clarify that classroom exclusions do not include actions that result in missed instruction for a brief duration when a teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations, and the student remains under the supervision of the teacher or other school personnel during such a brief duration.
16. Several commenters noted that the proposed rules will interfere with the ability of teachers, principals, counselors, and behavior specialists to intervene early and implement best practice by removing students from the classroom to deescalate and self-regulate, with the intent to return the child back to their classroom quickly. The commenters observed that these practices help to repair relationships and restore the learning environment.	Action taken. See response to 1-H-15.
17. Commenter noted that classroom exclusion requirements will create a time issue as they are the sole administrator in their school. The commenter observed that simple, low-key issues should be taken care of in a timely manner. They suggested they would have to meet with a parent if a student was put in detention or removed toward the end of class. The rules do not take into account who will handle everything.	Action taken. See response to 1-H-15.

## 1-I. WAC 392-400-430. Suspensions and expulsions—General conditions and limitations.

Comment Summary	Response
Best Practices and Alternatives to Suspension and Expulsion	
1. Several commenters recommended revising the rules to	No action taken. OSPI agrees with the
ensure suspension and expulsion are used as a last resort.	commenters that, as provided in WAC 392-400-
Commenters encouraged OSPI to require the use of best	010(5), school districts should administer
practices and alternatives to suspension and expulsion.	discipline in ways that respond to the needs and
Commenters also recommended that OSPI amend the rules	strengths of students, support students in
to ensure that other forms of discipline are administered	meeting behavioral expectations, and keep
before schools resort to classroom exclusion (WAC 392-400-	students in the classroom to the maximum
330), or long-term suspension and expulsion (WAC 392-400-	extent possible. Consistent with RCW
440, 392-400-445). Additionally, commenters recommended	28A.600.020(2), the final rules require school
that the rules clarify that schools should administer discipline	districts to first attempt one or more other forms
in ways that respond to the holistic needs of the student and	of discipline to support the student in meeting
support the student in meeting behavioral expectations.	behavioral expectations before administering
	classroom exclusion, short-term suspension, or

Comment Summary	Response
Several commenters supported the use of evidence-based positive and restorative practices and preventative interventions to improve school climate, school safety, and	in-school suspension. See WAC 392-400-330, WAC 392-400-435. And consistent with RCW 28A.600.015(7), the final rules require school districts to consider other forms of discipline to support the student in meeting behavioral expectations before administering long-term suspension or expulsion. See WAC 392-400-440.  However, the final rules acknowledge that teachers may need to immediately administer a classroom exclusion when a 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. See WAC 392-400-330(2). To ensure districts are supporting the student in meeting behavioral expectations in these cases, WAC 392-400-335(3) requires teachers to immediately notify principals when the student is excluded, and principals to meet with the student as soon as reasonably possible to administer appropriate discipline.  Comment noted. OSPI has developed, published, and provided training on the Behavior Menu of Best Practices since 2015. Since the 2016 update.
· ·	when the student is excluded, and principals to meet with the student as soon as reasonably possible to administer appropriate discipline.  Comment noted. OSPI has developed, published,
3. Commenter suggested that alternatives to suspensions and expulsions be listed in the regulations. Schools should then be required to review these before considering suspending or expelling a student.	context of Washington K–12 educational settings. Information about the training materials, including preliminary resources and a link to the behavior menu, can be found on the OSPI website at: Student_Discipline_Training.  No action taken. See responses to 1-I-1 and 1-I-2.

August 13, 2018

Comment Summary	Response
Commenter suggests that students receive in-school	Comment noted. The final rules allow and
interventions to learn appropriate behavior and then return	encourage such approaches.
to the classroom.	
5. Commenter shared their personal experience as a	Comment noted.
parent of a student who was suspended. The commenter	
observed that their student's behaviors did not change	
because they were suspended; the removals only kept them	
away from learning and made it more difficult for them to	
stay connected to school. The commenter noted that	
restorative justice practices used by their school were much	
more effective at addressing their behaviors and improving	
the school climate.	
6. Commenter noted that "any exclusion from class	Comment noted.
undercuts student learning and connection to school. We	Comment noted.
dispute the need for long-term suspension at all, as we	
believe it is not in the best interest of students' educational	
needs, mental health, or connection to school. In fact, in	
cases of students in foster care, many of whom experience	
issues with attachment and self-sabotage, suspensions often	
reinforce a negative self-image."	
7. Commenter recommended that the rules require school	No action taken. OSPI believes that the
districts to document the best practices or trauma-informed	commenter's proposed change is not necessary
alternatives that they attempted prior to a suspension or	because, beginning in 2019, the final rules
expulsion.	require school districts to provide written notice
expulsion.	of any suspension or expulsion to the student
	and parents that must include other forms of
	discipline that the school district considered or
	attempted, and an explanation of the district's
	decision to administer the suspension or
	-
	expulsion. See WAC 392-400-455(2)(c).
	The final rules also require school districts to
	adopt policies and procedures for the 2019–20
	school year that identify other forms of discipline
	school personnel should administer before or
	instead of administering a classroom exclusion,
	suspension, or expulsion to support students in
	meeting behavioral expectations. WAC 392-400-
	110(1)(e). These 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—which
	includes "Restorative Justice" and other positive
	behavioral intervention strategies as best
	practices.
8. Commenters expressed support for the proposed	Comment noted.
restrictions on the use of suspension or expulsion for	
absences or tardiness in WAC 392-400-430.	
9. Commenter stated that school exclusions play no	No action taken. Consistent with RCW
educational purpose. Research shows they play an	28A.600.015(2) and <i>Goss v. Lopez</i> , the final rules
cadedaterial parposer research shows they play an	25, 11500.015(2) and 0035 v. Lope2, the find fules

Comment Summary	Response
anti-educational purpose as those who are suspended or	define short-term suspension as up to ten
expelled are much less likely to complete high school than	consecutive school days.
those who are not. Further research demonstrates that	,
harsh disciplinary policies depress the academic	
performance of the entire building, presumed to be related	
to students' sense of trust and safety with the adults in	
charge.	
The commenter recommended that, except in very limited	
circumstances, no suspension should last longer than five	
school days. "That gives the school time to assemble a team	
of district and community support personnel and for the	
family to find a natural advocate to accompany them to a	
problem solving meeting where a system of supports will be	
designed to support the student's continued school	
enrollment (in class not in-school suspension). Ideally, the	
student will be offered some kind of thoughtful debriefing	
intervention during this time frame."	
10. Commenter expressed support for the use of evidence-	Comment noted.
based, positive, and restorative systems that can improve	comment notes.
school climate, school safety, and academic achievement for	
all students without resorting to suspension and expulsion.	
Any exclusion from class undercuts student learning and	
connection to school, and we dispute the need for long-term	
suspension at all as we believe it is not in the best interest of	
students' educational needs, mental health, or connection to	
school. The commenter noted that for students in foster	
care, many of whom have experienced issues with	
attachment and self-sabotage, and suspensions often	
reinforce a negative self-image and tend to have snowballing	
Considering the Student's Individual Circumstances	
11. Commenter recommended revising WAC 392-400-	No action taken. See response to 1-A-6.
430(2) to specify that a district should consider a student's	
disability when evaluating the student's individual	
circumstances. The rule should also require the district to	
consider the existence of a Behavioral Intervention Plan (BIP)	
or Individualized Education Program (IEP) when considering	
the nature and circumstances of the behavior violation, and	
whether the behavior was related to, or a manifestation of, a	
student's disability. Commenter noted that while	
manifestation determinations are currently only mandated	
under special education law when a student's removal	
constitutes a change of placement under WAC 392-172A-	
05145(5), whether a behavior is related to, or is a	
manifestation of, a student's disability is relevant whenever	
a school considers excluding a student.	
12. Commenter recommends that, under WAC 392-400-	No action taken. See response to 1-E-8.
330(2), schools take each student's racial, ethnic and cultural	22 22 22 23 24 25 25 25 25 25 25 25 25 25 25 25 25 25
background into account when evaluating the student and	
appropriate consequences.	
The transfer and transfer	

Comment Summary	Response
13. Commenter noted that the proposed requirement for	No action taken. See response to 1-E-8.
school districts to consider a student's individual	
circumstances before administering suspensions or	
expulsions can help avoid unduly harsh or ineffective	
discipline. However, without further guidance, such	
discretion can open the doors to biased application of a	
discipline policy. Commenter urged OSPI to provide	
additional guidance in WAC 392-400-430, including listing	
specific factors that may be relevant and how those factors	
should be taken into account. For example, the rules might	
call attention to consideration of factors such as a history of	
trauma or homelessness. When considering factors such as	
these, a school administrator might be encouraged to	
consider: (a) the efficacy of the proposed disciplinary	
sanction as a means to change behavior in light of the	
specific circumstances and (b) whether there are alternatives	
to exclusion that would not cut a child off from a safe place	
and support for basic needs.	
14. Commenter asked to what extent and end a school	Comment noted. For the 2018–19 school year,
district must determine whether a suspension or expulsion,	school districts must continue to consider the
and the length of the exclusion, is warranted. The	nature and circumstances of the violation to
commenter also asked whether districts should also consider	determine a suspension and the length of the
those who were impacted.	suspension is warranted in accordance with
and the same makes	WAC 392-400-245(1) and WAC 392-400-260(3).
	Wite 552 100 2 15(1) and Wite 552 100 200(5).
	Beginning in 2019, the final rules require school
	districts to consider the student's individual
	circumstances and the nature and circumstances
	of the behavioral violation to determine whether
	the suspension or expulsion, and the length of
	the exclusion, is warranted. WAC 392-400-430(2).
	This may include a variety of factors that school
	districts should evaluate on an equitable and
	case-by-case basis. The rules do not preclude
	school districts from also considering potential
	impact on other students and taking appropriate
	actions, such as restorative justice practices to
	repair the harm.
15. Commenter expressed appreciation for the	Comment noted.
considerations in WAC 392-400-430(2), noting that schools	
may use this opportunity to discuss prevention and ways to	
support the student.	
Returning students to their regular educational setting	
16. Commenter noted their school district knows the value	Action taken. The final rules are intended to
of serving differing groups of students in a wide variety of	establish uniform minimum due process
settings, and noted they have several programs that serve	requirements for student discipline in school
students with unique educational, social, and behavioral	districts in accordance with RCW 28A.600.015
needs. The commenter also noted their district policy	and RCW 28A.600.020, which authorize OSPI to
reserves to the district the right to transfer students outside	prescribe the substantive and procedural due
of the geographic attendance area.	process guarantees of all students in the

Comment Summary	Response
	common schools of the state. OSPI does not
The commenter expressed concern that the proposed rules	believe these statutes authorize the agency to
would severely restrict the school district's ability to	adopt rules specifically governing a school
administratively transfer struggling students to alternative	district's administrative transfer of students
educational settings that the district determines to be in	unrelated to students' behavioral violations.
their (and other students') individual best interests. The	
proposed rules impose an inappropriate one- size-fits-all	However, suspensions are "a denial of
approach on districts and students.	attendance" and expulsions "a denial of
approach on allowed and statement	admission" that are administered "in response to
	a behavioral violation". Accordingly, like the prior
	rules, the final rules require school districts to
	provide notice and process any time a student is
	referred to another school in response to a
	behavioral violation. See WAC 392-400-023(9),
	(16); WAC 392-400-025(7), (14). The final rules
	also specify at WAC 392-400-430(9) that, if a
	school district enrolls a student in another
	program or course of study during a suspension
	or expulsion, the district may not preclude the
	student from returning to the student's regular
	educational setting following the end date of the
	suspension or expulsion, except in limited cases.
17. Commenter observed that traditional programs have	Comment noted.
· =	Comment noted.
·	
•	
	Comment noted.
_	
·	
suspensions and expulsions are crucial to supporting	
students. OSPI should be providing as much support and	
	Action taken. OSPI disagrees with the
430(3)(b) will be invalid because it changes Legislative	commenter's interpretation of RCW
enactments regarding the return of a student to their regular	28A.600.020(7). That statute concerns the
students. OSPI should be providing as much support and incentive as possible to help districts in that regard."  19. Commenter stated that the proposed WAC 392-400-430(3)(b) will be invalid because it changes Legislative	Action taken. OSPI disagrees with the commenter's interpretation of RCW

Page 50

#### **Comment Summary**

educational setting. The commenter noted that RCW 28A.600.020(7) expressly does not prevent and thus allows school districts to provide educational services to a student in an alternative setting for an indefinite amount of time. "OSPI, however, has placed such a limitation on school districts, preventing them from administratively transferring a student based on the best interest of the student and/or district and providing educational services in an alternative setting beyond the end of a suspension or expulsion. By doing this, OSPI has amended the law and exceeded its rulemaking authority."

#### Response

provision of educational services during a suspension or expulsion and should not be confused with actions districts may take following the end date of an exclusionary discipline action or with any efforts districts may take to shorten the length of a suspension or expulsion.

A suspension or expulsion is the act of excluding a student "from a particular classroom or instructional activity area for the period of suspension or expulsion." RCW 28A.600.015(8). It is not the act of excluding a student from access to a basic education. Indeed, school districts are expressly precluded by statute from suspending the provision of educational services when imposing suspension or expulsion. *See* RCW 28A.600.015(5), (8).

From this, it is clear that the act of transferring a student to another school *in response to a behavioral violation* constitutes a disciplinary exclusion and must therefore have an end date of not more than the length of an academic term under RCW 28A.600.020(6). Accordingly, when a student's disciplinary exclusion ends, the student may return to their regular educational setting, unless otherwise prevented under law.

Federal guidelines support this understanding. The U.S Department of Education's Civil Rights Data Collection (CRDC), for example, defines the action of transferring a student to another school in response to a behavioral violation as an "Expulsion With Educational Services". In addition, one of the recommended action steps in the Department's <u>Guiding Principles: A</u>

Resource Guide for Improving School Climate and <u>Discipline</u> states: "Remove students from the classroom only as a last resort, ensure that any alternative settings provide students with academic instruction, and return students to their regular class as soon as possible." (ED, 2014, pg. 14).

For these reasons, the final rules clarify, consistent with RCW 28A.600.015(1), that a suspension or expulsion "may not be for an indefinite period of time" and, consistent with

August 13, 2018

Comment Summary	Response
,	RCW 28A.600.020(6), "must have an end date."  See WAC 392-400-430(9).
20. Commenter stated it well-established in the law that a school district may administratively transfer a student to another educational setting within the district without the consent of the student or the student's parents. The commenter noted that OSPI's proposed rule would prevent school districts from exercising that authority because the proposed rules require districts to return a suspended or expelled student to their regular educational setting if that student was receiving educational services in an alternative setting, regardless of whether remaining in the alternative setting would benefit the student. The proposed rule gives students and parents the right to their neighborhood school.	Comment noted. See response to 1-I-16 and 1-I-19.
21. Commenter stated that OSPI's proposed approach represents an anachronistic method of providing effective educational services. Requiring educational services in a regular classroom setting would not meet the needs of all children. Mandating educational services at a child's then current neighborhood classroom setting (or even preferring education services in such a setting) is a one-size-fits-all approach that ignores the individual, cultural needs of students. The commenter also observed that research tends to show that students who struggle with behavioral issues often achieve as much or more success when they are placed in alternative programs. The commenter recommended OSPI delete WAC 392-400-430(3)(b).	Action taken. See response to 1-I-19.
Other  22. Commenter expressed concerns that the following rule language is vague and unclear: "a school district must provide for early involvement of parents in efforts to support students in meeting behavioral expectations and must make every reasonable attempt to involve the student and parents in the resolution of behavioral violations." As proposed, it is unclear whether this would require a meeting, an email, a phone call, or other efforts.	Comment noted. See response to 1-F-13.
phone call, or other efforts.  23. Commenters expressed support for WAC 392-400-430(7), which prohibits school districts from suspending or expelling a student for absences or tardiness.  24. Commenter noted that the proposed rule would allow the student to petition for readmission at any time.  Commenter suggested that readmission should apply only to long-term suspensions and expulsions.	Comment noted.  No action taken. In accordance with RCW 28A.600.022(3), the prior rules explicitly provided that a student who received a short-term suspension, long-term suspension, or expulsion could petition for readmission. OSPI believes the final rules should be consistent with this standard.
25. Commenters expressed support for WAC 392-400-430(5), regarding reporting the student behaviors that led to exclusionary discipline to the school district superintendent or designee within 24-hours.	Comment noted.

August 13, 2018 Page 52

#### **Comment Summary**

26. Commenter noted that the language regarding educational services in WAC 392-400-430(3) may, in some circumstance, be impossible for schools to achieve. "If a student is in band, for example, that experience cannot be replicated by playing alone. A physical education course that is designed to teach team sports cannot be replicated by asking a student to exercise daily. Some classes require a student's presence to award credit." Commenter proposed that WAC 392-400-430(3) be reworded as follows: "A school district must make available to students reasonable educational services in conjunction with the administration of discipline in a manner that would allow a student to complete certain subject, grade-level, and/or graduation requirements, or consider modifying the student's schedule to make it more likely that the student will be able to keep pace with graduation credit requirements."

#### Response

No action taken. OSPI believes the language in this section of the final rules is consistent with RCW 28A.600.015(5) and RCW 28A.600.015(8), which prohibit school districts from suspending the provision of educational services to a student as a disciplinary action, and WAC 392-400-235(1) of the prior rules, which provided that "[n]o form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements."

In addition, OSPI disagrees with the commenter's apparent premise that WAC 392-400-430(3) requires school districts to essentially replicate coursework for students who have been suspended or expelled. Under WAC 392-400-610(1), districts must provide the student the opportunity to receive educational services, and the educational services must be designed to enable the student to continue to participate in the general educational curriculum, meet educational standards established within the district, and complete subject, grade-level, and graduation requirements. OSPI believes school districts have sufficient discretion in developing and delivering services that meet these criteria and the unique needs of students who have been excluded from their regular educational setting.

#### 1-J. WAC 392-400-435. Short-term and in-school suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter expressed concern that where the	Comment noted.
requirements are vague, they just don't seem to happen. "If	
you say other things should be tried first before considering	
suspension or expulsion, we don't see unless they're really	
sanctioned things, other things being tried first. There's very	
little leeway."	
2. Commenter expressed support for the proposed	Comment noted.
limitations on suspensions for students in kindergarten	
through fourth grade.	
3. Commenter stated that limiting the number of short-	Comment noted. OSPI disagrees with the
term suspensions or in-school suspensions for students in	commenter's contention that OSPI has no legal
grades K-4 contradicts the law. The commenter noted that	authority to place limitations on suspensions for
the Legislature expressly allows a school to suspend or expel	students in grades K-4. In accordance with the
without limitation on the number of days. Also, the	agency's rulemaking authority under RCW
limitation limits a teacher's authority to take disciplinary	28A.600.015(1) to establish rules that prescribe
action to correct a student who interferes with an orderly	the substantive and procedural due process
educational process.	rights of students served by school districts, OSPI

August 13, 2018

Page 53

Comment Summary	Response
	believes limiting suspension and expulsion of K–4 students is reasonably necessary to adequately protect the interest of young learners. What is more, these limitations are not new: Under the prior rules, short-term suspensions were limited by semester or trimester and school districts were precluded from long-term suspending students in grades K–4.
4. Commenter stated that limiting the number of short-term suspensions or in-school suspensions for students in fifth grade through twelfth grade prevents schools from tailoring discipline to a student's needs. The commenter noted that if a student has already reached the maximum days for short-term suspensions in an academic term, the school would be precluded from issuing another suspension for the same behavioral violation, and they would be forced to issue either a low-level form of non-exclusionary discipline or a long-term suspension. The commenter recommended the limitation be deleted.	No action taken. The limitations on cumulative days of suspension for students in grades 5–12 are well-established. Under WAC 392-400-245(4) of the prior rules, no student in the grade five and above program could be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester. In accordance with OSPI's rulemaking authority under RCW 28A.600.015(1), the agency believes the limitations regarding short-term suspension of students in grades 5–12 should remain in place.
5. Commenter noted that the proposed grade-level limitations in WAC 392-400-435(3) would present serious issues for school districts. Commenter stated the following: "Some students can be truly dangerous, even at a young age. For example, let's say a third-grade student is suspended for a total of ten days for numerous aggressive behaviors during the first two months of school. After the student reaches his or her tenth day of suspension, assume the student punches a teacher in the face. In this instance, the student must be returned to class the next day because the suspension limit has been reached.	Action taken. OSPI disagrees with the commenter's suggestion that the final rules' limitations on school districts' authority to suspend or expel children in grades K–4 will materially undermine districts' safety initiatives.  To begin, many of the concerns the commenter raises with respect to the final rules applied equally to the prior rules: The final rules' gradelevel restriction on cumulative short-term suspensions days is no different from the prior rules'. Likewise, the prior rules—like the final
Alternatively, assume a fourth-grade student forces a first-grade student to perform a sex act. The fourth-grade student may only be removed for a maximum of two weeks, and must be returned to school (indeed, under OSPI's rules districts must "make reasonable efforts to return the student to the student's regular educational setting as soon as possible" - regardless of the level of remorse shown or likelihood of the incident occurring again. What about the kindergartner student? What if that student (and his	rules—precluded school districts from administering long-term suspensions to students in grades K–4. To be sure, WAC 392-400-445(4)—which provides that, except for firearms violations under WAC 392-400-820, school districts may not administer an expulsion for any K–4 student is new. The number of expulsions historically administered annually to K–4 students across the state, however, is not

Must the kindergartner be forced to move to a different school? That does not make sense to us."

fourth grader?

parents) do not believe he is safe in the same school as the

In addition, the final rules do not limit school districts from taking a range of appropriate actions to respond to threats or aggressive behavior without resorting to suspension or expulsion—including using threat assessments to

significant.

Comment Summary	Response
,	manage or reduce any threat posed by young students.
	OSPI agrees with the commenter, however, that school safety concerns may warrant removing a student—even a student as young as grades K—4—from their regular educational setting. Accordingly, OSPI revised WAC 392-400-810 to specify when a school district may preclude a student from returning to their regular educational setting following the end date of a suspension.
6. Commenter suggested that schools will disagree with the removal of "exceptional misconduct" clause. Districts use the "exceptional misconduct" clause to specify which offenses could result in immediate short-term suspension. The commenter stated they agree with reigning in the use of "exceptional misconduct," noting that some districts overuse it. However, their district uses "exceptional misconduct" only for drug or alcohol offenses of immediate and continuing danger.	Comment noted. OSPI believes the provisions for "exceptional misconduct" under the prior rules are no longer necessary and may even conflict with statutory limitations on the use of long-term suspension for certain types of behaviors. RCW 28A.600.015(7) provides that, with the exception of firearms violations, school districts are not required to impose suspension or expulsion for any behavioral violation "and should first consider alternative actions."
	Nevertheless, the final rules allow school districts to immediately exclude students in certain emergency circumstances without first attempting other forms of discipline to support the student in meeting behavioral expectations. Specifically, districts can administer classroom exclusions and emergency expulsions when the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of substantial disruption of the educational process. See WAC 392-400-330(2); WAC 392-400-510.
7. Commenter stated that HB 1541 (2016) iterated the offenses that districts could administer a short-term or long-term suspension for a first time offense, including firearms, drugs, gangs, etc.	Comment noted. RCW 28A.600.015(7) provides that, with the exception of firearms violations, school districts are not required to impose suspension or expulsion for any behavioral violation "and should first consider alternative actions."
8. Commenter expressed support for adding the in-school suspension provision in WAC 392-400-435(4).	Comment noted.
9. Commenter asked if expulsion is the option for a student who need to be suspended for beyond ten cumulative school days.	Comment noted. A long-term suspension is a suspension that exceeds ten consecutive school days. See WAC 392-400-023(11); WAC 392-400-025(14)(b). RCW 28A.600.015(7) provides that, with the exception of firearms violations, school districts are not required to impose suspension

August 13, 2018

Page 55

Comment Summary	Response
	or expulsion for any behavioral violation "and
	should first consider alternative actions."
10. Commenter suggested the language in the rules is not	No action taken. See response to 1-I-2.
prescriptive enough where it is needed most as many school	
districts or schools have not already embraced these truths.	
"I worry that while you have used so much language making	
clear that suspensions are not an affective or necessary way	
to correct most nonviolent behavior, it remains much too	
easy for schools to jump to short-term suspensions or in-	
school suspensions if they disagree with your belief." The	
commenter asked why not list other discipline school	
districts should try, and why not require school districts to go	
through a full checklist of other attempts?	
11. Commenter questioned how many days a student in special education can be suspended and expelled from school in an academic school year. The commenter also asked whether limitations on the number of suspension days apply to individual suspensions or the cumulative number of days a student can be suspended.	Comment noted. The final rules establish limitations on suspensions in WAC 392-400-435, which, among other things, provides that school districts may not administer a suspension for a K–4 student for more than ten cumulative school days during any academic term, or a suspension for a student in grades 5–12 (1) for more than fifteen cumulative school days during any single semester, or (2) for more than ten cumulative school days during any single trimester.  These limitations on short-term suspensions apply to all students, including students receiving special education, and must be construed in a manner consistent with existing state and federal laws concerning students receiving special education. Additional provisions regarding the discipline of students in special education are addressed in WAC 392-172A-07045.

# 1-K. WAC 392-400-440. Long-term suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter noted that the proposed requirement for	Comment noted.
districts to "consider other forms of discipline" before	
administering a long-term suspension or expulsion is vague,	
impractical, and difficult for districts to document in the	
event of an appeal.	
2. Commenter recommended school districts be	No action taken. See response to 1-I-2.
unequivocally required to use other practice before resorting	
to exclusions rather than belief statements that will simply	
allow the good actors to remain doing well and the bad	
actors to remain acting bad.	
3. Commenter stated that excluding students in grades K–	Comment noted. See response to 1-J-3.
4 from long-term suspension and expulsion is contrary to	
law, noting that the Legislature allows school districts to	

August 13, 2018

Comment Summary	Response
long-term suspend any student for any of the reasons listed	
in RCW 28A.600.015(6).	
4. Commenter noted that while limiting long-term	No action taken. See response to 1-J-4.
suspensions to grades 5–12 works in most situations, some of	·
the most disruptive, unsafe, and assaultive students are in	
grades K–4. The commenter recommended increasing the	
short-term suspension limit for this grade band.	
5. Commenter expressed concern that the new limit on	Comment noted. The final rules are consistent
long-term suspensions and expulsions (students must pose	with RCW 28A.600.015(6), which provides that
an imminent danger to others or imminent threat of	school districts may consider using long-term
substantial disruption to the educational process) will not	suspension or expulsion in response to
allow school districts to long-term suspend students for	behavioral violations under subsections (6)(a)
several offenses that they thought the Legislature had	through (d), and RCW 28A.600.015(7) which
allowed. "Under OSPI's rules, could we long term suspend a	provides that with the exception of firearms
high-school student caught smoking marijuana alone during	violations "school districts are not required to
lunch. We would not be able to show imminent danger to	impose long-term suspension or expulsion for
other students. And, how exactly do we show imminent	behavior that constitutes a violation or offense
threat of substantial disruption to the educational process?	listed under subsection (6)(a) through (d) of this
The Legislature would allow us to long-term suspend/expel a	section and should first consider alternative
student in such a situation regardless whether we could	actions."
show imminent danger to others or imminent threat of	
substantial disruption"	In accordance with the intent section of HB 1541
	(2016) regarding reducing "the length of time
Commenter also expressed concern that they should have to	students of color are excluded from school due
show the students would be an imminent threat to other's	to suspension and expulsion" and OSPI's
safety, or imminent disruption to the educational process for	statutory authority under RCW 28A.600.015(1),
the entire length of the suspension. "if a student assaults	the final rules provide that the length of a long-
another student and the District wants to impose a twenty-	term suspension must be determined based on
day suspension, the District could not do so unless it	whether the student would pose an imminent
concludes that the student would pose an imminent threat if	danger or imminent threat should the student
he or she is returned on day 4 (or 7, or 15) of the	return to school before the proposed end date of
suspension." The commenter noted it would be seemingly	the exclusion. A determination under this
impossible for a school district to defend such a conclusion	standard concerns an emergency situation that
during the appeal process.	the school district would expect to occur in the
	school environment absent an imposed period of
	exclusion, whereas the standard for emergency
	expulsion concerns the immediacy of the ongoing
	danger or threat the student poses at the time of
	the exclusion. This provision in the final rules is
	similar to the provision under WAC 392-400-
	260(3) of the prior rules which provided that "[t]he nature and circumstances of the violation
	must be considered and must reasonably warrant
	a long-term suspension and the length of the
	suspension imposed."
	suspension imposeu.
	OSPI believes this standard protects students
	from unwarranted exclusions that are unrelated
	to adequately ensuring a safe and supportive
	learning environment for all students.
	rearring environment for all students.

August 13, 2018

Comment Summary	Response
6. Commenters recommended defining "imminent danger" justifying long-term to include only situations posing a threat of physical injury to other students or school personnel.	Determining whether a student would pose a threat or danger is highly fact dependent, and OSPI accordingly does not believe it is necessary to adopt regulatory standards or bright-line rules with respect to these terms. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates to implement the rules.  No action taken. See response to 1-K-5.
7. Commenter suggested "determination of harm or threat" is too narrow of a title, noting the violations in 28A.600.015 are not specifically about harm or threats, nor are they all behavioral violations.	Action taken. The final rules replace the titles "Determination of harm or threat" with the titles "Limitations on long-term suspensions" and "Limitations on expulsions."
8. Commenter noted that the requirement in WAC 392-400-440(2) puts the burden on the school district to determine when it is appropriate for a student to return to school when the burden should be on the student to apply for readmission. Here, the school district would basically be making a "no readmission" decision before the suspension occurred.	Comment noted. Consistent with RCW 28A.600.022, the final rules still require school districts to hold a reengagement meeting for long-term suspensions and develop a reengagement plan, which includes the provision that "[i]n developing a reengagement plan, school districts should consider shortening the length of time that the student is suspended or expelled". WAC 392-400-710(2). In addition, the rules are consistent with RCW 28A.600.022(3), which provides that a suspended or expelled student may "petition for
9. Commenter suggested that the terms "imminent danger" and "immediate danger" need to be clarified for school staff.	No action taken. See response to 1-K-5.
10. Commenters recommended WAC 392-400-440(2) be amended to add the following determination: "Other forms of non-exclusionary discipline are insufficient to prevent the imminent threat."	No action taken. OSPI believes the proposed language is not necessary because WAC 392-400-440(1) requires school districts to consider a range of options to address the student's behavioral violation, including whether other forms of discipline would be more effective.
11. Commenter stated that WAC 392-400-440(2) imposes an unworkable standard on school districts in determining when they can long-term suspend a student. The standard is problematic because it requires school districts to be clairvoyant about what a student would do in the future, it essentially prevents districts from ever long-term suspending a student because of the imminent-danger and imminent-threat standard, and it contradicts the Legislature's enactment. The commenter recommended the standard be removed.	No action taken. See response to 1-K-5.
12. Commenter noted they dispute the need for long-term suspension at all as they believe it is not in the best interest	Comment noted.

August 13, 2018

Page 58

Comment Summary	Response
of students, it gives schools a false sense of security, and	
there is no science that shows that it changes student	
behavior.	
13. Commenters recommended WAC 392-400-440 be	No action taken. OSPI believes the proffered
amended to add the following: "Nothing in this section limits	language is not necessary.
a district's ability to shorten a long-term suspension based	
on a petition for readmission, reengagement meeting, or	
appeal."	

# 1-L. WAC 392-400-445. Expulsions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter noted that the proposed requirement for districts to "consider other forms of discipline" before administering a long-term suspension or expulsion is vague, impractical, and difficult for districts to document in the event of an appeal.	Comment noted.
2. Commenters recommended defining "imminent danger" justifying long-term suspension or expulsion (WAC 392-400-440, 392-440-445) and "risk to public health or safety" justifying an extension of expulsion (WAC 392-400-820) to include only situations posing a threat of physical injury to other students or school personnel.	No action taken. OSPI declines to adopt language limiting expulsions only to cases involving a threat of physical injury to other students or school staff. Determining when conduct constitutes risk to health or safety or an imminent danger is highly fact dependent, and further limiting the rule could unduly burden school districts' ability to ensure that school facilities remain safe.
3. Commenters recommended WAC 392-400-445(2) be amended to add the following determination: "Other forms of non-exclusionary discipline are insufficient to prevent the imminent threat."	No action taken. See response to 1-L-2.
4. Commenter recommended adding a reference to the firearm exception in WAC 392-400-445(1) and (3).	No action taken. OSPI believes the commenter's proposed change is not necessary because WAC 392-400-445(2) references RCW 28A.600.015(6), which references the firearms statute under RCW 28A.600.420. In addition, WAC 392-400-445(3) references the petition for extension of expulsion under WAC 392-400-480, which, in turn, references the firearms exception under WAC 392-400-820.
5. Commenters recommended WAC 392-400-445 be amended to add the following: "Nothing in this section limits a district's ability to shorten a long-term suspension based on a petition for readmission, reengagement meeting, or appeal."	No action taken. See response to 1-K-13.

# 1-M. WAC 392-400-450. Suspensions and expulsions—Initial hearing with student.

Comment Summary	Response
Several commenters expressed support that proposed	Comment noted.
WAC 392-400-450 encourages early communication with	
parents about the student's behavior and discipline issues.	
2. Several commenters recommended revising the rules to	Action taken. See response to 1-A-30.
encourage or require parent communication or participation.	
Commenters recommended that the rules require schools to	
notify parents of the initial conference between a student	
and the school administrator who may administer a	
suspension or expulsion. Similarly, other commenters	
suggested that the rules require schools to notify parents of	
any communication or discussions between a student and	
the school administrator who may administer a suspension	
or expulsion. Other commenters recommended that the	
rules require that parent be present at the initial conference,	
and noted that students, as minors, need legal and	
emotional support and should not be expected to share their	
side of the story without their parent or guardian.	
3. Commenter noted that the addition of "an opportunity	Comment noted.
for the student to contact the student's parents" may	
require training of administrative staff and may prolong the	
time of an investigation and resulting short-term suspension.	No action taken Consistent with Cose v James
4. Commenter suggested a sort of Miranda Rights process	No action taken. Consistent with Goss v. Lopez
should be afforded to students accused of misbehavior	and OSPI's statutory authority under RCW
warranting suspension or expulsion, as they are afforded to all persons in the U.S. accused of civil and criminal	28A.600.015(1), the final rules provide that school districts must hold an initial hearing with
wrongdoings. "The accused should be apprised of their rights	the student before any deprivation of the
and be afforded access to their parents and legal	student's rights. At the hearing, the student must
representation at all hearings. The accused should be able to	be provided information pertaining to the alleged
confront their accuser(s) and to respond to the accusations."	behavioral violation, including an explanation of
commone their accessing, and to respond to the accessions.	the evidence and the discipline that may be
	administered. And the school district must
	provide the student an opportunity to share their
	perspective and provide explanation. See WAC
	392-400-450.
	The final rules further provide increased
	opportunities for parent participation in the
	initial hearing.
	Following the initial hearing, WAC 392-400-455
	requires school districts to provide written notice
	explaining the student and parent's right to
	appeal the suspension or expulsion.
	OSPI believes these due process procedures
	adequately provide due process protections to
	students that ensure they have notice of the
	allegations made against them and an
	opportunity to respond. Notably, nothing in the

removal.

Comment Summary	Response
	final rules precludes a school district from adopting policies and procedures setting forth expectations that provide additional procedural protections for students.
5. Several commenters expressed concern that the state is reducing the procedural protections afforded to children who are threatened with long-term suspension. Under current law, students may have a hearing on the merits before the long-term suspension is imposed. The current	No action taken. OSPI disagrees with the commenters' contention that the initial hearing provided for in the final rules do not adequately protect students' due process rights.
provision of due process prior to the deprivation is	To begin, the final rules are consistent with RCW

The commenters stated that the proposed rule appears to permit a student to be removed for up to 10 days without a proper hearing. The commenters noted this is significant because it interrupts a student's education and poses a challenge for families who work and will need to find supervision for the student.

consistent with federal law and the best interests of

students. If the district determines an emergency warrants

immediate removal, procedures exist to allow for a summary

The commenters also observed that the initial hearing and the optional conference with the principal are not effective remedies for this denial of pre-deprivation due process. The proposed initial hearing does not provide necessary procedural safeguards, such as an assurance that the person conducting the hearing is not also the same person who proposed the discipline. An impartial hearing officer is a critical element of any hearing under due process principles.

The commenters recommended that OSPI remove the initial hearing and replace it with a principal conference that involves the student's parents. The commenters also recommended the rules clarify that the person who imposes the discipline cannot conduct the initial hearing.

To begin, the final rules are consistent with RCW 28A.600.015(1), which provides that a school district may impose a suspension or expulsion temporarily after an initial hearing for no more than ten consecutive school days or until the appeal is decided, whichever is earlier. This means that, in addition to the initial hearing, the student and parents may appeal the suspension or expulsion prior to a deprivation in excess of ten consecutive school days.

Consistent with *Goss v. Lopez* and OSPI's statutory authority under RCW 28A.600.015(1), the final rules provide that school districts must hold an initial hearing with the student before any deprivation of the student's rights. At the hearing, the student must be provided information pertaining to the alleged behavioral violation, including an explanation of the evidence and the discipline that may be administered. The school district must provide the student an opportunity to share their perspective and provide explanation. *See* WAC 392-400-450.

The rules provide increased opportunities for parent participation during an initial hearing with the student.

Following the initial hearing, WAC 392-400-455 requires school districts to provide written notice explaining the student and parent's right to appeal the suspension or expulsion.

OSPI believes these due process procedures adequately provide due process protections to students that ensure they have notice of the allegations made against them and an opportunity to respond. Notably, nothing in the final rules precludes a school district from adopting policies and procedures setting forth

Comment Summary	Response
	expectations that provide additional procedural
6. Several commenters strongly recommended OSPI ensure that parents can participate in initial informal conferences with principals considering suspension or expulsion. An initial conference should be allowed to proceed only if the parent cannot be reached after documented efforts by the school.  The commenters noted that the initial hearing is the only pre-deprivation chance a student and family will have to present their perspective on discipline. However, a significant power imbalance exists between students and school administrators. This power imbalance is heightened by the frequent cultural differences between students who are disciplined (and are disproportionately students of color)	protections for students.  Action taken. OSPI agrees that school districts should involve parents in the discipline process as soon as possible. OSPI has therefore amended WAC 392-400-450 to provide increased opportunities for parent participation during an initial hearing with the student. The final rules further clarify that language assistance requirements also apply to the initial hearing with the student, the optional conference with the principal, behavior agreements, notice for classroom exclusions, and notices and communications regarding the provision of educational services during suspension or expulsion.
and school administrators (who are predominantly white).  Students cannot be expected to advocate for their own rights and should have the support of a parent advocate who can assist in balancing the inequitable distribution of power.	expuision.
7. Commenter expressed concern that interventions to prevent and renegotiate suspensions and expulsions may not be effective without additional supports. The commenter observed a principal and student may not be cooled down enough to resolve the issue during the initial hearing. The commenter also expressed support for the optional conference with the principal, but noted it does not disrupt the power imbalance between school personnel and family.	Comment noted.
8. Commenter expressed support for the emphasis on increased parental or caregiver involvement, but they recommended that timely parental contact must be achieved, not just attempted.	No action taken. OSPI declines to adopt the commenter's proposal. OSPI believes that timely parental contact can consistently be attempted, but cannot always be achieved given multiple factors that may vary depending on the circumstances, family availability, and communication methods.
9. Commenter recommended that parents must be notified of an initial conference between a student and an administrator who may impose suspension or exclusions. The rule should also require that school districts provide language access services to parents for initial conference with school administrators. The commenter noted that parents who do not speak English are left out of conversations with the administrators. "It's really important that children are not used as interpreters and we have somebody that can help speak with the parents from the beginning and make sure they always speak in that parent's primary language."	Action taken. See response to 1-M-6.
10. Commenter recommended that parents' perspectives, as well as the student's health and well-being, be at the	Comment noted.

August 13, 2018

Page 62

Comment Summary	Response
forefront with any decisions made regarding student	
discipline. The commenter shared their personal experience	
as a parent, noting that schools often tell parents they are	
partners when they are fundraising and seeking donations,	
but not when it comes to disciplining their children. "How is	
the absence of communication with the minor's parent at	
the inception of discipline our children morally, ethically, or	
even legally acceptable? It shouldn't be."	
11. Commenter stated that it is a fiction to propose that a	Action taken. See response to 1-M-6.
meeting between a student and a principal is fair and	
equitable due process to protect them from an unwarranted	
deprivation of school services. The commenter observed that	
a disproportionate number of students of color and students	
with disabilities are long-term suspended and expelled, and	
these students have to go to initial hearings to speak for	
themselves. The commenter also noted that principals are	
disproportionately white, which makes the initial hearing	
even more problematic.	
The commenter also observed that these situations are	
highly emotional, yet students are expected to advocate for	
themselves. The commenter recommended that adults who	
care and know the student be there to speak with them.	
12. Commenter expressed concern that a student with	Action taken. See response to 1-M-6.
autistic needs may be required to sign something without a	
parent present. The commenter recommended the rules	
should clarify that parents are allowed to ask questions or	
express concerns during the initial hearing. The commenter	
also recommended that the rules allow parents to	
participate in the initial hearing.	

## 1-N. WAC 392-400-455. Suspensions and expulsions—Notice to student and parents.

Comment Summary	Response
1. Commenter recommended OSPI clarify that parent notification must be in writing with clear instructions, and in their native language, when a student is excluded from class for any length of time. The commenter also recommended that the notice include opportunities for conferences and counseling.	Action taken. See response to 1-M-6.
2. Commenter recommended that parent notification must be sent by certified letter, not by email.	No action taken. OSPI declines to adopt the commenter's proposal. However, nothing in the final rules prevents a school district from adopting such policies or practices based on the needs of the district's communities and parent population.
3. Commenter recommended that schools notify parents, guardians, and students of supportive services available to the family when a student is disciplined, such as counseling,	No action taken. OSPI declines to adopt the commenter's proposal. However, nothing in the final rules prevents a school district from adopting such policies or practices based on the

August 13, 2018

Comment Summary	Response
private mental health resources, housing, after-school programs, and medical services.	needs of the district's communities and parent population.
	OSPI further notes that, during the required reengagement process for long-term suspensions and expulsions, school districts must consider "[p]roviding academic and nonacademic supports that aid in the student's academic success and keep the student engaged and on track to graduate". WAC 392-400-710.
4. Commenter suggested OSPI clarify "other forms of discipline."	No action taken. See response to 1-E-10.
5. Commenter suggested that timely parental contact must be achieved and documented, not just attempted.	No action taken. See response to 1-M-8.
6. Commenter recommended OSPI clarify the process for parents to provide feedback on educational services. They suggested OSPI amend WAC 392-400-455 to ensure that parents receive notice of the opportunity to provide input on educational services and necessary contact information, in a language that parents can understand.	No action taken. OSPI believes the commenter's proposal is not necessary because the final rules provide at WAC 392-400-455(3) that the written notice to parents provided following an initial hearing—including notice of the parents' opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610—must be in a language the student and parents understand.  Starting in 2019, school districts must adopt policies that, among other things, describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610. See WAC 392-400-110(i). Under WAC 392-400-110(3), districts must make these policies available to all parents, including parents with limited-English proficiency as required
7. Commenter recommended OSPI clarify how a person, school, or district document that a parent received a written notice.	under Title VI of the Civil Rights Act of 1964.  No action taken. The final rules set timelines appealing a suspension or expulsion under WAC 392-400-465 based on the date the school district provides written notice under WAC 392-400-455. Therefore, school districts must document the delivery of written notices rather than document parent receipt of written notices. OSPI believes the question of how to document district compliance with these requirements is best left to local district determination, taking into account the district's discrete needs and processes.
8. Commenter noted that the rules require districts to provide more clear notice to parents when students are excluded from classrooms, suspended, or expelled.	Comment noted.

August 13, 2018

Page 64

Comment Summary	Response
9. Commenter recommended OSPI provide templates or more specific requirements for parent notices.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules—which may include the development of templates and additional resources. Nothing in the final rules precludes a school district from adopting policies and procedures setting forth its own unique procedure for providing parental
	notice, so long as meet they meet the minimum requirements of these rules.

## 1-O. WAC 392-400-460. Suspensions and expulsions—Optional conference with principal.

Comment Summary	Response
1. Commenter expressed general support regarding an optional conference with a principal in WAC 392-400-460. However, the commenter expressed concerns that the timeline to request an optional conference and appeal a suspension/expulsion (WAC 392-400-465) may be confusing, including how it might impact when the appeal hearing would occur.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
2. Commenter noted that the optional conference in WAC 392-400-460 appears to duplicate the initial hearing with the principal in WAC 392-400-450. The benefit of the optional conference is that it may include the student's parents. OSPI should remove the "initial hearing" stage in WAC 392-400-450 and replace it with the principal conference in WAC 392-400-460 and add a clarification that the principal cannot conduct the initial hearing if it was the principal imposing the discipline.	No action taken. OSPI disagrees with the commenter that the optional informal conference under WAC 392-400-460 duplicates an initial hearing under WAC 392-400-450. Unlike an initial hearing, principals have no obligation at an optional informal hearing to provide notice of the student's violation of a school district discipline policy, explain the evidence regarding the violation, or explain the discipline that may be administered. In addition, optional informal conferences do not lead to a decision regarding the behavioral violation, and, accordingly, no action taken at an informal conference can be appealed under these rules.  The purpose of the informal conference is to ensure that school districts allow parents to participate, at the parent's sole discretion, in a non-adversarial meeting with the building principal to share the student's perspective and discuss other forms of discipline.
3. Commenter suggested OSPI clarify whether the optional	No action taken. See response to 1-0-2.
conference is recorded or documented in such a way that it would stand up in court.	·

#### 1-P. WAC 392-400-465. Suspensions and expulsions—Appeal.

#### **Comment Summary**

1. Commenter suggested that students should have no more than informal appeal rights if they are provided educational services in an alternative setting, noting that these students have not been deprived of a basic education. The commenter recommended the rules be amended to state that a student who is provided educational services in an alternative setting has minimal, informal grievance rights (as determined by the district).

The commenter recommended the following language: "(1) Requesting an appeal. A student or the parents may appeal a long-term suspension or expulsion to the school district superintendent or designee orally or in writing, unless that student is receiving educational services in an alternative setting via a course of study enumerated in WAC 392-121-107.

(2) A student who is receiving educational services in an alternative setting via a course of study enumerated in WAC 392-121-107 may not appeal a suspension or expulsion. However, that student may request an informal conference under WAC 392-400-460."

2. Commenter suggested that OSPI's appeal procedures are far too extensive and impractical. Commenter noted that there are practical problems with OSPI's appeal procedures. The commenter observed that a student who receives a one-day in-school suspension would be entitled to three levels of administrative appeals. However, a teacher who is facing discharge is only entitled to one administrative appeal.

The commenter recommended the following language for short-term suspension and in-school suspension appeals: "(1) Appeal. The superintendent or designee must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(2) Appeal decision. The superintendent or designee 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 decision must include: (i) The superintendent or designee's decision to affirm, reverse, or modify the suspension; (ii) The duration and conditions of the suspension, including the dates on

#### Response

No action taken. OSPI disagrees with the commenter's suggestion that student's opportunity to receive educational services during the period of a suspension or expulsion under RCW 28A.600.015 and WAC 392-400-610 justifies providing a lower standard of due process.

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

For these reasons, OSPI declines to adopt the commenter's suggested language.

No action taken. OSPI disagrees with the commenter's characterization of the final rules' appeal process. Under the rules, students are entitled to a pre-deprivation initial hearing in which the building principal or designee provides the student notice of the student's behavioral violation and an opportunity to be heard before administering a suspension or expulsion. *See* WAC 392-400-450.

Following the initial hearing and the administration of a suspension or expulsion, students may appeal the decision to the district superintendent or designee. See WAC 392-400-465. For short-term suspensions of the sort the commenter identifies, the superintendent or designee must provide the student and parents an opportunity to share the student's perspective and explain the behavioral violation. WAC 392-400-465(3). For long-term suspensions or expulsions, when more is at stake for the student and the facts may be more complex, students

Comment Summary	Response
which the suspension will begin and end; and (iii) That the	and parents may be represented by counsel,
student has an opportunity to access educational services.	question witnesses, share their perspective and
, , , , , , , , , , , , , , , , , , ,	explain the behavioral violation, and introduce
(c) No right to review. The superintendent's or designee's	evidence. WAC 392-400-465(4).
decision is not subject to review under WAC 392-400-470."	
	Following the appeal decision of the
	superintendent or designee, the student or
	parents may request the school board or a
	disciplinary appeal council review or reconsider
	the decision. WAC 392-400-470. Unlike the prior
	rules at WAC 392-400-315, the board's review
	and reconsideration of the appeal decision does
	not provide students or parents an opportunity
	for <i>de novo</i> review.
	OSPI believes this process simplifies and mostly
	standardizes the minimum due process
	procedures school districts must provide
	students who are suspended or expelled. It offers
	a right to a single level of appeal and a
	subsequent second-level right to request school
	district review of the appeal. OSPI does not
	believe this is unduly extensive or impractical.
3. Commenter suggested that the first level of appeal be to	No action taken. See response to 1-P-2.
the school principal (instead of the optional conference), the	
second level of appeal be to the principal's supervisor, and the third level of appeal be to the school board.	
4. Commenters raised concern that a student who is	Comments noted. Under the final rules, students
removed from class for one period may appeal the teacher's	who are removed from class for a single period
decision all the way to the superintendent.	and remain at school are deemed to have been
decision an the way to the supermentality	administered a "classroom exclusion". See WAC
	392-400-023(2) and WAC 392-40-025(2). The
	final rules provide no formal appeal rights for
	students who have been removed from class
	under a classroom exclusion. See 392-400-335.
	Starting in 2019, school districts must establish
	grievance procedures to address parents' or
	students' grievances related to the
	administration of a classroom exclusion. WAC
	392-400-110(1)(h). Districts may elect at their
	own discretion to create classroom exclusion
	appeal rights under their policies. Nothing in the
	final rules, however, require it.
5. Commenter observed that the appeal procedures are too	Comment noted.
cumbersome, noting that students in their school district	
rarely appeal a suspension or expulsion. "It is critical to	
explain to students and their parent(s) their rights, their	
actions, their means to continue 'doing school,' and ensure a	
smooth transition back into school."	

August 13, 2018

Page 67

#### **Comment Summary** Response 6. Commenter recommended OSPI develop one due No action taken. Consistent with OSPI's statutory process, appeal, and grievance procedure for all levels of authority under RCW 28A.600.015(1), OSPI discipline rather than having a unique procedure for each believes different discipline actions require category of misconduct. different procedural requirements that vary in formality to adequately protect the interest of students. In accordance with Goss v. Lopez and statutory procedural provisions under RCW 28A.600.015 and 28A.600.020, the final rules include specific procedural safeguards required by federal and state law pertaining to suspensions, expulsions, and emergency expulsions. Nevertheless, the final rules are designed to simplify and, to the extent permissible under law, standardize the minimum due process procedures that school districts must provide students who are suspended or expelled. OSPI believes the rules will reduce unnecessary adversarial proceedings and undue burdens on school officials and students alike while protecting and enhancing student's due process guarantees. 7. Commenter recommended that appeals for short-term No action taken. OSPI believes the commenter's suspension be informal, noting that a one-day suspension proposed change is not necessary. While it is true will be served before any appeal process. Administrators that, beginning in 2019, students may elect to could easily become overwhelmed by appeals. formally appeal a short-term suspension under WAC 392-400-465(3) after the period of suspension has ended, OSPI believes that this will likely occur only in rare cases where the underlying facts or circumstances are truly contested. Indeed, OSPI believes the appeal process for short-term suspensions under the final rules is less burdensome than the grievance procedure that was in place for decades under the prior rules. Under those provisions, which remain in effect for the 2018–19 school year, districts must conduct a conference with the student prior to the short-term suspension, then must afford parents and students the right to informal building-level conference with the school principal or designee, then must provide an opportunity for the parent or student to present a grievance to the district superintendent or designee, and, finally, allow the parent or student to grieve the suspension to the school board or disciplinary appeal council. See WAC 392-400-250 and 392-400-255. The prior rules, then, allow for

Comment Summary	Response
,	three levels of review for a short-term suspension
	instead of the two levels provided under the final
	rules. OSPI believes the final rules better ensure
	that students' due process rights are protected
	without imposing an undue burden on districts.
8. Commenter observed that the multiple levels of appeals	No action taken. See response to 1-P-2.
in the proposed rules are unnecessary, overly burdensome,	
costly, and distracting. The commenter noted that the result	
tends to be parents and lawyers focusing on technicalities	
and arguments, rather than how to best help a student. The	
commenter recommended the rules provide more flexibility	
for a school district to allow a student to appeal directly to	
the school board or only to the superintendent.	
9. Commenter observed the appeal process is unnecessary.	Action taken. See response to 1-P-1.
The commenter noted that if a student is receiving	
educational services during a removal, or is transferred to a	
new school, they would not be deprived of any right to	
education. However, the student would still be able to	
appeal the school district's decision multiple times.	
The commenter noted that their school district's local	
procedure related to student transfers provides for an	
informal appeal procedure because no legal rights are being	
taken from a student.	
10. Commenters recommended the rules provide for	No action taken. OSPI declines to adopt the
automatic appeals on all long-term suspensions and	commenter's proposed change. RCW
expulsions, with community-based advocacy support	28A.600.015(1) provides that a school district
available to the student and parents.	may impose the suspension or expulsion
	temporarily after an initial hearing for no more
	than ten consecutive school days or until the
	appeal is decided, whichever is earlier. OSPI
	believes that allowing for an appeal to occur at
	any time during a suspension or expulsion would
	be impractical considering this statutory
	provision.
	Moreover, OSPI believes that families and school
	personnel have an interest in closure and finality
	related to the appeal process, which the
	timelines in the final rules help provide.
	and the main area map provide.
	Finally, and independent of the appeal process,
	the final rules provide under WAC 392-400-
	430(6)(b) that the student and parents may
	petition for readmission at any time during the
	suspension or expulsion.
11. Commenter expressed support for the extended time	Action taken. For the reasons identified in 10
frame for appealing a suspension or expulsion. However, the	above, OSPI declines to adopt changes to the
commenter suggested OSPI make the appeal available	rules that provide parents and students a right to
The state of the s	- salet salet provide parents and stadents a right to

Comment Summary	Response
throughout the entire suspension, noting that many families	appeal during the entire period of a suspension
do not have the resources to appeal within a short amount	or expulsion.
of time. The commenter also stated that school enrollment is	
a civil right, so exclusions carry due process rights to appeal.	However, OSPI agrees with the commenter that
	it can be challenging for families to perfect
The commenter also noted that schools and families need	appeals of disciplinary actions within short time
skilled mediators and counselors to help resolve differences.	periods. Accordingly, the final rules provide that,
	starting in the 2019–20 school year, school
	districts' appeal time limits for suspensions and
	expulsions must be no less than five school
	business days from the date the school district
	provides the written notice of the disciplinary
	action to the student and parent. See 392-400-
	465(2).
12. Commenter observed a lack of consistency in the	No action taken. OSPI disagrees with the
proposed appeal timelines. The commenter recommended	commenter's suggestion that final rules lack
the time frame for each level of appeal be five days to allow	consistency regarding appeal timelines. The
enough time to make arrangements.	appeal timelines are consistent with RCW
	28A.600.015(1), which provides that a school
	district may impose the suspension or expulsion
	temporarily after an initial hearing for no more
	than ten consecutive school days or until the
	appeal is decided, whichever is earlier.
	OSPI further believes that the rules permit
	parents, students, and school districts adequate
	time to prepare for an appeal hearing. The final
	rules, for example, provide that the school
	district and student or parents may mutually
	agree to postpone long-term suspension and
	expulsion appeal hearings beyond the prescribed
	timeline. WAC 392-400-465(4)(b). And nothing in
	the final rules prevents a school district from
	planning and preparing for an appeal hearing
	prior to receiving a formal appeal hearing request
42 Comments and that find the	from the student and parents.
13. Commenters noted that five days to appeal is not	Comment noted. See response to 1-P-12.
enough. The commenters observed that a school district	
generally has twenty days to respond when a parent makes a request. This should be equal.	
14. Commenter noted they would, out of courtesy, provide a	Comment noted.
witness list to the district before an appeal hearing, and they	
would receive no list in return from the school.	
15. Commenter expressed concern that the names of	Comment noted. Under WAC 392-400-465(e),
witnesses who do not testify at an appeal hearing will be	school districts must allow parents and students
included on the witness list. The commenter recommended	to inspect a list of witnesses "that will be
their names be removed from the witness list.	introduced at the appeal hearing." In order to
	ensure that parents and students can adequately
	prepare for the hearing and properly exercise
	their right to question witnesses under WAC 392-

August 13, 2018

Page 70

Comment Summary	Response
	400-465(f)(ii), school districts should endeavor to only include witnesses on the witness list that they reasonably anticipate will appear at the appeal hearing.
16. Commenters recommended the appeal decision in WAC 392-400-465(4)(h) includes the following determinations: "The student's behavior was a violation under RCW 28A.600.015(6), and if the student returned to school before completing the long-term suspension or expulsion the student would pose an imminent threat of physical injury to students or school personnel."	No action taken. OSPI believes the commenter's proposed language is not necessary because the WAC 392-400-465(4)(h)(ii)(B) is sufficient to address the commenters' concern.
17. Commenters recommended WAC 392-400-465(4)(h)(v) be amended to include the following: "Notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710, and the contact information for the person who will coordinate scheduling of the reengagement meeting."	Action taken. Given the importance and centrality of reengagement meetings under SHB 1541 (2016) and the final rules, OSPI agrees with the commenters suggestion that the appeal hearing's presiding officer should provide the student and parent contact information for the school district staff who will schedule the reengagement meeting. The final rules accordingly include the commenter's proposed language.
18. Commenter observed that the proposed "pending appeal" provision in WAC 392-400-465(6) makes sense and is clearer than the current rule.	Comment noted.

## 1-Q. WAC 392-400-470. Suspensions and expulsions—Review and reconsideration.

Comment Summary	Response
1. Commenter recommended OSPI restore a family's	No action taken. OSPI does not agree that the
absolute right to speak to school board.	final rules remove a parent's or family's right to
	speak to a school board. WAC 392-400-470,
	which establishes new rules governing a school
	board's or discipline appeal council's (DAC)
	review of an appeal hearing, provides that the
	board or DAC may request to meet with the
	student or parents to hear further arguments and
	gather additional information. In addition,
	nothing in the final rules precludes parents or
	students from addressing boards in open public
	meetings during regular order.

## 1-R. WAC 392-400-475. Discipline appeal council.

Comment Summary	Response
No comments	

## 1-S. WAC 392-400-480. Petition to extend expulsion.

Comment Summary	Response
1. Commenters recommended defining "risk to public	No action taken. See response to 1-L-2.
health or safety" justifying an extension of expulsion to	
include only situations posing a threat of physical injury to	
other students or school personnel.	
2. Commenter noted that the petition to extend an	Comment noted. WAC 392-400-480 of the final
expulsion does not apply to firearm violations.	rules provides that, for firearms violations under
	WAC 392-400-820, the principal or designee may
	petition to extend an expulsion at any time.
3. Commenter suggested "length of an academic term" be	No action taken. OSPI does not believe the
revised to "length of an additional academic term."	recommended change is necessary and believes
	the language in the final rules is sufficient.
4. Commenters recommended WAC 392-400-480 be	Action taken. OSPI agrees with the commenters
amended to add the following: "Appeal. If the petition is	that students and parents should have some
granted, within ten school business days of the receipt of the	appeal rights in the event a district
decision, the student or parents may appeal the decision to	superintendent grants a petition to extend an
the district's school board."	expulsion under WAC 392-400-480. The final
	rules therefore provide at WAC 392-400-480(5)
	that students or parents may request the school
	board or discipline appeal council review and
	reconsider the superintendent's decision to
	extend the expulsion.

# 1-T. WAC 392-400-510. Emergency expulsions—Conditions and limitations.

Comment Summary	Response
1. Several commenters suggested that the rules should limit the use of emergency expulsion and require other interventions to prevent disruption to the educational process. Several commenters specifically suggested limiting emergency expulsion to threat of physical injury or physical safety.	Action taken. See response to 1-E-7.
2. Commenters recommend removing language from WAC 392-400-025, 392-400-510, and 392-400-515 that allow emergency expulsion for "immediate and continuing threat of material and substantial disruption of the educational process." This language does not meet the standard set by HB 1541 (2016) that students may not be long-term suspended or expelled for "discretionary discipline." "Disruption of the educational process" as defined in the proposed rule would be a discretionary offense and not qualify as one of the behavioral violations included in HB 1541 for which a student may be expelled.	Action taken. See response to 1-E-7.
3. Commenter recommended OSPI clarify "interrupting classroom," noting that it will open the door to students being suspended.	Action taken. See response to 1-E-7.
4. Commenter recommended OSPI clarify what happens	No action taken. OSPI believes this change is not
when an emergency expulsion is not converted into a	necessary because, in accordance with RCW
suspension or expulsion. They noted that their school district	28A.300.042, business rules and reporting
records these removals as "non-suspension excused	guidance for OSPI's statewide longitudinal
absences."	education data system, CEDARS, already require

August 13, 2018

Page 72

Comment Summary	Response
	the reporting of emergency expulsions that end
	without being converted.
	OSPI intends to provide technical assistance and
	guidance to assist school districts, parents, and
	advocates in implementing the rules.
5. Commenter observed that "disruption of the educational	Action taken. See response to 1-E-7.
process" and "disrupting classwork" are subjective. Given	
this, the commenter noted that the proposed rules still allow	
a student to be emergency expelled for a discretionary	
offense, which does not align with HB 1541 limitations on	
expulsions.	
6. Commenter recommended emergency expulsions be	Action taken. See response to 1-E-7.
limited to threats of physical injury, noting that "disruption	
of the educational process" is too vague.	
7. Commenter shared their personal experience as a parent	Comment noted.
of a student with disabilities who has been expelled from	
school. The commenter noted that removing their student	
from school is not addressing the underlying reasons for	
their behavior. The commenter recommended OSPI ensure	
the rules are concise so schools do not have an open door to	
remove students, and recommended there needs to be a	
definition for when students can be emergency expelled.	

## 1-U. WAC 392-400-515. Emergency expulsions—Notice to student and parents.

Comment Summary	Response
1. Commenters recommend removing language from WAC	Action taken. See response to 1-E-7.
392-400-025, WAC 392-400-510, and WAC 392-400-515 that	
allows emergency expulsion for "immediate and continuing	
threat of material and substantial disruption of the	
educational process." This language does not meet the	
standard set by HB 1541 that students may not be long-term	
suspended or expelled for "discretionary discipline."	
"Disruption of the educational process" as defined in the	
proposed rule would be a discretionary offense and not	
qualify as one of the behavioral violations included in HB	
1541 for which a student may be expelled.	
2. Commenter recommended OSPI clarify that educational	No action taken. OSPI believes the commenter's
services for an emergency expulsion would be the same as a	proposed change is not necessary because WAC
short-term suspension.	392-600-610(3) and WAC 392-600-610(4)
	establish the standards for educational services
	that turn on the number of days a student is
	excluded, not the type of discipline being
	administered.

#### 1-V. WAC 392-400-520. Emergency expulsions—Optional conference with principal.

Comment Summary	Response
1. Commenter expressed general support regarding an	Comment noted. OSPI intends to provide
optional conference with a principal in WAC 392-400-460.	technical assistance and guidance to assist school
However, the commenter expressed concerns that the	districts, parents, and advocates in implementing
timeline to request an optional conference and appeal a	the rules.
suspension/expulsion (WAC 392-400-525) may be confusing,	
including how it might impact when the appeal hearing	
would occur.	

#### 1-W. WAC 392-400-525. Emergency expulsions—Appeal.

Comment Summary	Response
1. Commenter expressed concerns regarding proposed WAC 395-400-525(3)(c), under which the student and parent may inspect a list of witnesses prior to the appeal hearing. Commenter noted that this would limit administrators' ability to collect witness statements, as there is no option to redact or excuse witness statements as there is under WAC 392-400-525(6)(c). Commenter is also concerned that this may conflict with the Family Educational Rights and Privacy Act (FERPA).	Comment noted. Under WAC 392-400-525(6)(a), school districts must allow parents and students to inspect a list of witnesses "that will be introduced at the appeal hearing." In order to ensure that parents and students can adequately prepare for the hearing and properly exercise their right to question witnesses under WAC 392-400-525(7)(b), school districts should endeavor to only include witnesses on the witness list that they reasonably anticipate will appear at the appeal hearing.
2. Commenter asked whether "official(s) presiding over the appeal may be district staff rather than a hearing officer. "Perhaps our ombudsman?"	Comment noted. The final rules do not preclude a school district from designating a district employee as a hearing officer for the purpose of presiding over an emergency expulsion appeals hearing under WAC 392-400-525. The presiding official may not be involved in the student's behavioral violation or decision to emergency expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures. WAC 392-400-525(5).

## 1-X. WAC 392-400-530. Emergency expulsions—Review and reconsideration.

Comment Summary	Response
No comments.	

### 1-Y. WAC 392-400-610. Educational services during suspension, expulsion, or emergency expulsion.

Comment Summary	Response
1. Commenters recommended OSPI provide more	No action taken. OSPI declines to adopt the
definitions around educational services and school	commenter's proposal. The final rules are
personnel.	designed to balance, on the one hand, the need
	for clear and uniform statewide standards
	governing the minimum substantive
	requirements for delivering educational services
	to excluded students with, on the other, local
	educators' expertise in teaching and learning in

Comment Summary	Response
	their districts. OSPI believes that imposing even
	more prescriptive obligations on how districts
	should make educational services available
	would be unduly burdensome to educators and
	may make it more difficult for teachers to ensure
	student success.
2. Commenter asked if there will be legal ramifications or	Comment noted. The final rules do not provide a
an appeal process to enforce this new section if a district is	specific appeal process for cases where a school
not able to provide services or fails to follow through.	district fails to provide suspended or expelled
The able to provide services of falls to follow through.	students an opportunity to receive educational
	services. Other causes of action against school
	district officials for failing to perform a duty,
	however, may be available.
3. Commenter noted this raises funding issues.	Comment noted.
Commenter noted that ensuring basic educational	Comment noted.
services is feasible using independent study and online	
curriculum. Raising this expectation to full services and	
opportunities guarantees a district will be negligent as it is	
not possible to replicate what happens in classrooms.	
5. Commenter noted that it is not appropriate to expect	Comment noted.
students who are suspended to have the same access and	
comparability as those who are in school doing as expected.	
There must be an expectation that the student who is	
expelled be responsible for doing some work, submitting it	
for feedback, and then taking on another assignment.	
6. Commenter suggested OSPI recommend in-school	No action taken. OSPI believes it is not necessary
suspension as a best practice for providing educational	to include this proposal in the final rules because
services during suspension.	OSPI has already issued recommendations of this
	sort. For example, OSPI Bulletin 050-16,
	"Provision of Educational Services During
	Suspension or Expulsion", includes
	recommendations regarding in-school
	suspension. The final rules require school
	districts to adopt policies and procedures for the
	2019–20 school year that 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 behavioral
	expectations, and provides further that other
	forms of discipline may involve the use of best
	practices and strategies included in the state
	menu for behavior. See WAC 392-400-110(1)(e).
7. Commenter noted that many school districts do not have	Comment noted.
an alternative setting for students to access.	
8. Several commenters recommended that the requirement	No action taken. See response to 1-Y-1.
to provide educational services must include instruction by a	
certificated teacher and other supports, noting that is what	
is equitable, comparable, and adequate. One commenter	
noted that if teachers not necessary for students who are	

Comment Summary	Response
suspended or expelled, they are not necessary for any student. One commenter noted that we can't expect students to teach themselves and then reengage in school.	
One commenter shared their personal experience as a grandparent whose grandchild was suspended multiple times and did not have access to educational resources, help, or tutoring.	
9. Several commenters expressed concern that the proposed rule creates an expectation for parents to be engaged in shaping educational services, but no process to facilitate that engagement.	Action taken. OSPI agrees with commenters that parents should have an opportunity to become engaged in the educational services the students receive during an exclusion.
	To that end, the final rules provide that, as soon a reasonably possible after administering a suspension or expulsion, school districts must provide written notice to the student and parents about the educational services the district will provide, including a description of the educational services that will be provided, and the name and contact information for the school personnel who can offer support to keep the student current with assignments and course work. See WAC 392-400-610(2).
	The final rules also require school districts to ensure that notices and communications related to educational services are provided in a language the student and parents understand. See WAC 392-400-610(6).
10. Several commenters requested OSPI clarify the process for parents to provide input on educational services by requiring notices of educational services to include contact information for relevant district coordinators and ensuring notices are provided in the language that parents understand.	Action taken. See 1-Y-9.
11. Commenter noted that one size does not fit all. Any given situation calls for professional judgement.	Comment noted.
12. Commenter expressed concern that students who receive special education services would not receive the same levels and types of support they have been identified as needing in school while excluded from the school setting. They recommend that the rules specifically address the needs of students who receive special education, and specify that such students continue to receive supports of the same level and type as they would in the classroom when suspended or expelled.	No action taken. See response to 1-A-53.
The commenter also expressed skepticism that providing educational services to students with disabilities when	

Comment Summary	Response
suspended or expelled would ameliorate the negative	
impacts of suspension and expulsion. They recommend the	
rules focus on preventing exclusionary discipline for students	
with disabilities by specifically addressing the needs of	
students with disabilities.	
13. Commenters recommended OSPI clarify that schools	No action taken. See response to 1-Y-1.
should provide (not simply consider) equivalent services and	
necessary technology or transportation to ensure that	
students can equitably participate in education services.	
14. Commenter asked if a school district must use the BECCA	Comment noted. Under recently enacted OSPI
or truancy process if a student denies educational services,	rules governing student absences, chapter 392-
noting that the proposed WAC requires a school district to	401 WAC, student absences due to suspensions,
provide educational services.	expulsions or emergency expulsions imposed
	under chapter 392-400 WAC are excused
	absences if the student is not receiving
	educational services and not enrolled in
	qualifying course of study activities in accordance
	with WAC 392-121-107. See WAC 392-401-
	020(9).
	Charles with a second above and a decreased
	Students with excused absences are not deemed
	truant for purposes of the state's compulsory
45 Commenters were and of the considerations in NAC	education laws.
15. Commenters recommended the considerations in WAC	No action taken. See response to 1-Y-1.
392-400-610(2) be requirements instead of considerations.  16. Commenters recommended WAC 392-400-610(2) be	No action taken. See response to 1-Y-1.
amended to add the following: "Consider academic and	No action taken. See response to 1-1-1.
nonacademic supports that aid in the student's academic	
success and keep the student engaged and on track to	
graduate."	
17. Commenters recommended WAC 392-400-610(3) be	No action taken. OSPI agrees with the
amended as follows: "As soon as reasonably possible, but no	commenters that it is crucial for school districts
later than two school business days, after administering a	to provide early notice to parents regarding the
suspension or expulsion, a school district must provide	educational services the district will provide
written notice to the student and parents about the	under WAC 392-400-610 so as to ensure parents
educational services the district will provide."	have an opportunity to be engaged in the
'	student's learning. OSPI believes, however, that
	the "as soon as reasonably possible" standard for
	notification under this rule adequately advances
	that purpose.
18. Commenter noted that during a suspension, a student is	Comment noted. OSPI amended WAC 392-121-
normally excluded from all district property, including buses.	108 in 2016 to remove suspensions and
If schools have to use cabs to provide transportation for	expulsions from the list of enrollment exclusions
students, that would be a huge new unfunded mandate.	so that school districts can now claim state
	funding for students who have been long-term
	suspended or expelled. In accordance with
	chapter 28A.160 RCW, school districts may claim
	transportation funding for providing students
	transportation to an alternative setting during
	the duration of a suspension or expulsion.

Comment Summary	Response
19. Commenter recommended the rules provide more instructions around educational services obligations. The commenter shared their personal experience as a parent of a student who was suspended several times, noting that the student did not always receive homework packets. When they did receive homework packets, they did not include meaningful work that was included in the classroom lesson, just coloring.	No action taken. See response to 1-Y-1.
20. Commenter raised concerns that the proposed rules do not specifically indicate who must provide educational services, and they recommended the language be strengthened. They recommended it not be a secretary or someone who is just monitoring the student. Students need the opportunity to continue to move forward with their academic work. "One of the things we know, especially for black students within the education system, if they start falling behind, which a medium- to long-term suspension would definitely set up in their academic work, it's unlikely that they're going to catch up, and that the issues around the student to prison pipeline are real."	No action taken. See response to 1-Y-1.  OSPI notes that school personnel responsible for providing educational services will vary depending on district resources as well as the course of study for which the student is receiving services. OSPI has offered guidance regarding the provision of educational services to suspended or expelled students (see, e.g., OSPI Bulletin 050-16, "Provision of Educational Services During Suspension or Expulsion") and intends to provide further technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
<ul><li>21. Commenter noted that is inadequate that students with disabilities who are sent home receive only two hours of instruction each week.</li><li>22. Commenter recommended the following language</li></ul>	Comment noted.  No action taken. OSPI disagrees with the
regarding notice to students and parents: "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 opportunity for educational services. The school district must provide the written notice in person, by mail, or by email. The notice must include the following: (a) That the student has an opportunity to access educational services while suspended or expelled; and (b) The name and contact information for the school personnel who can discuss available opportunities."	commenter's suggestion that notice to parents under WAC 392-400-610(2) should only state that students have an opportunity to receive educational services, rather than describing the services themselves. OSPI believes the final rule is consistent with RCW 28A.600.015(5), RCW 28A.600.015(8), and RCW 28A.600.020(7) regarding the provision of educational services during suspension or expulsion. Moreover, the final rules regarding educational services are consistent with considerations put forth by the Student Discipline Task Force during several meetings between October, 2016 and January, 2017.
	Finally, OSPI believes it is crucial for school districts to provide early notice to parents regarding the educational services the district will provide under WAC 392-400-610 so as to ensure parents have an opportunity to be engaged in the student's learning. WAC 392-400-610(2)(a) is intended to further this purpose.

Comment Summary	Response
23. Commenter recommended OSPI clarify or define	Action taken. OSPI believes that the commenter'
"comparable, equitable, and appropriate."	suggestion to further clarify or define the phrase "comparable, equitable, and appropriate" is not
	necessary to further the purpose of HB 1541
	(2016). Instead, OSPI has elected to amend the
	final rules to require school districts to provide students the opportunity to receive educational services that enable the student to (1) continue
	to participate in the general education curriculum; (2) meet the educational standards
	established within the district; and (3) complete
	subject, grade-level, and graduation requirements. <i>See</i> WAC 392-400-610(1)(a).
	This change is intended to establish clear and uniform statewide standards governing the minimum substantive requirements for deliverir educational services to excluded students, while simultaneously relying on local educators, administrators, and counselors to design educational programs that allow students excluded for disciplinary reasons the opportunit to continue to learn and make progress toward graduation.
	OSPI believes that imposing even more prescriptive obligations on how districts should make educational services available would be unduly burdensome to educators and may make it more difficult for teachers to ensure student success.
	Finally, OSPI believes this approach is fully consistent with RCW 28A.600.015(5), RCW 28A.600.015(8), and RCW 28A.600.020(7) and is authorized by RCW 28A.600.015 and RCW 28A.600.020, which require OSPI to establish lawful and reasonable rules prescribing the substantive and procedural due process guarantees of pupils in school districts.
24. Commenter stated that the proposed WAC 392-400-610	Action taken. See response to 1-Y-23.
will be invalid because it changes Legislative enactments	
regarding educational services. The commenter noted that	
RCW 28A.600.020(7) allows, but does not require, school	
districts to provide educational services in an alternative	
setting. However, the proposed rules would require school	
districts to provide educational services in an alternative	
setting to students who have been long-term suspended or expelled.	

Comment Summary	Response
The commenter recommended the following language: "A	·
school district may choose to provide a student who has	
been suspended, expelled, or emergency expelled	
educational services in an alternative setting. An alternative	
setting should include any course of study enumerated in	
WAC 392-121-107. Any such course of study that meets the	
requirements of WAC 392-121-107 will be deemed	
comparable, equitable, and appropriate educational	
services."	
25. Commenter stated that the proposed WAC 392-400-610	Action taken. See response to 1-Y-23.
will be invalid because it changes Legislative enactments	Action taken. See response to 1-1-23.
regarding educational services. The commenter noted that	
RCW 28A.600.020(7) encourages, but does not require,	
services that are provided in an alternative setting to be	
"comparable, equitable, and appropriate." If OSPI keeps this	
language, it needs to be clear on what comparable,	
equitable, and appropriate means.	Astion taken Congress to 4 V 22
26. Several commenters proposed "comparable" be	Action taken. See response to 1-Y-23.
removed as a standard for educational services, noting that	
comparable educational services will "not only be logistically	
impossible to accomplish, but it also gives one pause to	
wonder why a student wouldn't want this type of	
personalized learning compared to the potential rat race of	
attending high school." The commenters also noted that the	
services referenced in WAC 392-121-107 are likely not	
comparable to the learning a student would receive in the	
classes in which they are enrolled prior to the suspension.	
27. Commenter asked the following regarding "comparable,	Action taken. See response to 1-Y-23.
equitable and appropriate services": "Does this intend a full	
time teacher in an off-site classroom? Who determines if	
the services are comparable, equitable and appropriate? If a	
student is suspended for violence towards a staff member,	
how will convince staff members they will be safe to provide	
these comparable, equitable, and appropriate services.	
When does professional judgement decide if this meets the	
standard? Will this be eventually decided by the courts?	
The language goes too far!"	
28. Commenter noted the Legislature does not require that	Action taken. See response to 1-Y-23.
educational services provided during suspensions be	
comparable, equitable, and appropriate.	
29. Commenter noted that "comparable educational	Action taken. See response to 1-Y-23.
services" sounds an awful lot like "basic educational	
services." The commenter suggested OSPI is now saying that	OSPI notes that a suspension or expulsion is the
a district must provide basic educational services to a	act of excluding a student from a particular
student even though it just suspended a student from basic	classroom or instructional activity area for the
educational services, and this does not make sense.	period of suspension or expulsion, RCW
	28A.600.015(8), and cannot be interpreted as the
"It is not clear whether, for example, a student who has a	act of excluding a student from access to a basic
third- semester Japanese language class when they are	program of education. On the contrary, state law
suspended must be allowed to enroll in the same class at a	explicitly bars school districts from suspending

#### **Comment Summary**

new school. If so, this would be particularly difficult, as many schools offer specialized classes that may not be available in other schools. By way of another example, if the student's previous Japanese teacher was the only such teacher in the District, and the student threatened to kill the teacher with a knife, it appears the District may be forced to compel that teacher to provide educational services to a student who just threatened her life (or, in the alternative, provide expensive private tutoring in Japanese)."

Commenter noted that based on research, the Legislature rightly concluded that students who are suspended or expelled need to remain connected with educational services during the suspension or expulsion. But, neither the Legislature nor any research, supports that staying connected to educational services means that a student must receive the comparable classes during the suspension or expulsion. The bigger picture is to not let student fall behind in grade level and to not let behavioral issue detour a student from academic completion.

Schools have many tools at their disposal to protect students in that regard without imposing a "comparability" standard. It is simply unrealistic to impose such a 'requirement' as OSPI has done. We suspect that is exactly why the Legislature did not require comparable education services.

30. Commenter noted that HB 1541 uses "comparable" language only in reference to long-term suspensions and expulsions. The commenter observed that students who are short-term suspended likely get packets home or make-up work, and trying to do something comparable for anything fewer than 10 days does not make sense.

#### Response

the provision of educational services to a student as a disciplinary action. *See* RCW 28A.600.015(5), (8).

OSPI further notes that the final rules do not create the Hobson's choice the commenter offers regarding a hypothetical Japanese language class. WAC 392-400-610 does not require school districts to provide coursework to suspended or expelled students that is identical to the courses the student was enrolled in prior to the exclusion. Instead, the rules leave it to local district educators to provide educational services that enable a student to continue to participate in the district's education curriculum, meet the educational standards established within the district, complete subject, grade-level, and graduation requirements. See WAC 392-400-610(a).

Action taken. See response to 1-Y-23.

RCW 28A.600.020(7) provides "Nothing in this section prevents a public school district, educational service district, the Washington state center for childhood deafness and hearing loss, or the state school for the blind if it has suspended or expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting or modifying the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular education services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

#### **Educational services for short-term suspensions**

31. Commenters suggested that while they agree with the concept of trying to keep students connected to as much learning as possible during a suspension, the process of having a school employee act as a liaison between teachers

Comment noted. OSPI is sympathetic to the commenters' concern that the rules will impose new costs on districts. Notably, however, districts are permitted under WAC 392-121-108 to claim

Comment Summary	Response
and the student will require the Prototypical School Funding	state apportionment for students when they are
Formula to include a new role. This shift of responsibility	enrolled in a course of study providing
from the student in the present system to a staff member in	educational services during a suspension or
the new system to get assignments from the teacher and	expulsion. Additional supplemental state and
return them to the teacher is an expensive shift.	federal funding, too, is available.
	OSPI notes further that the final rules do not call for a school district to recruit new school personnel to act as a "liaison." OSPI believes that, in all likelihood, the provisions under WAC 392-400-610(3) and (4) that provide for coordination of excluded students' coursework could be fulfilled using existing staffing and resources.
32. Commenter asked how a school district can provide	Comment noted. WAC 392-400-610(3) and (4) do
access to a teacher when a student has demonstrated	not require in-person contact between school
behavior in a way that would inhibit a teacher from	personnel and suspended or expelled students.
providing such access. "If a student threated the only	The methodology districts use to provide the
calculus teacher and that teacher is the one who is expected	coordination required under these sections is left
to provide access to the content, how does this work? Could	to the discretion of local school personnel.
the access be via email? Phone? Internet platform? When	
would this contact occur? During the day, before the day, after the school day?"	
33. Commenter asked whether "access to school personnel"	Comment noted. See response to 1-Y-31.
means a school would pay a teacher or paraeducator extra	Comment noted. See response to 1-1-51.
time to oversee a student's educational services. The	
commenter also asked what a school should do if no staff	
member is willing to do it. The commenter suggested that	
this is an unfunded mandate that is not contemplated in the	
law.	
34. Commenter recommended OSPI make it clear that access	No action taken. OSPI does not believe the
to school personnel during a suspension or expulsion could	commenter's proposed language is necessary.
be accomplished via telephone or email. If a student is	See response to 1-Y-32.
suspended or expelled for threatening behavior against staff	
members (or even students), staff members should not be required to have face-to-face contact with a student.	OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
The commenter recommended the following language:	davocates in implementing the rules.
"Access to school personnel who can offer help with	
assignments and course work for all of the student's subjects	
or classes. This access does not need to be face-to-face.	
Instead, school personnel can use email, phone, or online	
tools at their discretion."	
35. Commenter opposed the requirement in WAC 392-400-	Comment noted.
610(4) and (5) that school districts to provide students who	
are short-term suspended access to school personnel who	
can offer support to keep the student current with	
assignments and course work for all the student's regular	
subjects or classes. The commenter noted that this may be	
interpreted as requiring a continuation of the student's	
subjects or classes even if a school district might otherwise	

August 13, 2018

Page 82

Comment Summary	Response
choose to transfer the student out of their classes. This	
would give a suspended student more rights than a student	
who follows the rules. School districts need discretion to	
move a student (any student) out of one class and into	
another for any reason that supports the district's	
educational mission.	
Educational services for long-term suspensions and expulsion	IS
36. Commenter noted that the Student Discipline Task Force	Comment noted. The final rules do not require
worked hard on developing language regarding educational	school districts to place students in an alternative
services, but they noted that it was never intended for	learning experience (ALE). The final rules allow
families to be required to place students in ALE. There	school districts flexibility to provide students
should be flexibility. ALE plan is a good guide, but it should	educational services under any of the courses of
not disrupt a student's educational program.	study under WAC 392-121-107, which includes
	ALE as one option.
37. Commenter asked whether a student may be enrolled in	Comment noted. The final rules allow school
an ALE school when they have been suspended or expelled.	districts flexibility to provide students
"I have an ALE school in my district that is state-approved	educational services under any of the courses of
and offers a Washington High School Diploma. The certified	study under WAC 392-121-107, which includes
teacher meets with the student a minimum of one hour per	alternative learning experience (ALE) as one
week while the student does 30 hours of learning per week.	option.
The ALE school's teacher does not meet as many hours per	
week as in the district's regular state-approved school."	
38. Commenters recommended WAC 392-400-610(6) be	No action taken. See response to 1-Y-1.
amended to add the following: "A school district must	
provide access to school or district personnel who can offer	
support to coordinate between the services provided in	
accordance with WAC 392-121-107 and the student's regular	
school. This staff must also communicate with the student,	
parents, and the student's teachers about the student's	
academic progress."	

# 1-Z. WAC 392-400-710. Student reengagement after long-term suspension or expulsion.

Comment Summary	Response
1. Regarding WAC 392-400-710(1)(b), which states that	Comment noted. When it comes to parent
student reengagement meetings must occur "as soon as	involvement, what is determined as "reasonable"
reasonable possible, if the student or parents request a	may vary according to family circumstances and
prompt reengagement meeting," one commenter noted that	needs. OSPI therefore believes it is not necessary
"reasonable" looks very different from a principal's view	to define "reasonable" for purposes of the final
rather than a parent's and asked who determines what	rules.
"reasonable" is. The commenter also noted that school	
administrators have busy schedules.	
2. Commenter noted the timeline for when a reengagement	No action taken. OSPI believes the final rules are
meeting must occur does not seem correct. They suggest	consistent with RCW 28A.600.022(1), which
""The reengagement meeting must occur at least 5 days	provides that "[s]chool districts must convene a
before the student returns to school, and ideally will be held	meeting with the student and the student's
within the first 20 days of suspension/expulsion in order to	parents or guardians within twenty days of the
facilitate an early return to school, if possible."	student's long-term suspension or expulsion, but
	no later than five days before the student's

Comment Summary	Response
,	enrollment, to discuss a plan to reengage the
	student in a school program."
3. Commenters expressed concerns the new requirement	No action taken. OSPI believes the commenter's
that reengagement meetings must be held as soon as	concern is addressed by WAC 392-400-710(1)(b),
requested by a student or parent. Students or parents often	which provides that a reengagement meeting
request a meeting immediately after a suspension or	must occur as soon as "reasonably possible"
expulsion, when emotions for all parties are still high.	when the student or parents request a prompt
	meeting.
4. One commenter noted that districts and parents will	Comment noted.
likely appreciate suggestions and resources on implementing	
new requirements. In particular, refocusing student	
reengagement meetings to focus on proactive interventions	
and supports for students may be challenging for many.	
5. Commenters expressed support for the proposed rule	Comment noted.
requiring that school districts meet and collaborate with	
students and parents to develop culturally responsive	
reengagement plans when long-term suspension or	
expulsion is administered.	
6. Several commenters recommended increasing families'	No action taken. OSPI believes the commenters'
access to reengagement meetings by requiring meetings	proposal is not necessary because the final rules
occur at a mutually agreed upon time and location, including	adequately promote collaboration between the
times outside of school business hours and locations off	student, parents, and school district to facilitate
school district property. Holding reengagement meetings at times and locations that are more viable and comfortable for	mutually agreed upon terms for developing a
students and families can set the stage for successful and	reengagement plan. Nothing in the final rules, however, precludes a school district from
responsive reengagement plans.	adopting policies and procedures that provide for
responsive reengagement plans.	the sort of collaboration the commenters urge
	here.
	nere.
7. Commenters recommended removing "as appropriate"	No action taken. OSPI agrees with the
in WAC 392-400-710(2)(b), commenting that students'	commenter that, in most cases, students'
cultural histories and contexts and family cultural norms and	histories and contexts and their families' cultural
values should always be considered when developing	norms and values are central to developing a
reengagement plans.	culturally sensitive and responsive reengagement
	plan under WAC 392-400-710(2). School districts,
	however, need not consider every part of the
	student's cultural background—only the parts
	that are relevant and appropriate to the
	reengagement plan. The term "as appropriate" in
	WAC 392-400-710(2)(b) is intended to recognize
	this.
8. Commenter recommended, instead of "culturally	No action taken. See 1-A-84.
responsive," reengagement plans should use prior	
experience, frames of reference, and performance styles.	
9. Commenters recommend OSPI provide more guidance to	Comment noted. OSPI intends to provide
districts in the development of culturally responsive	technical assistance and guidance to assist school
reengagement plans, including a model form for	districts, parents, and advocates in implementing
reengagement meetings. The form should instruct districts	the rules.
to inform students and families of the district's definition of	
"culturally responsive," and ask students, parents, and	

Comment Summary	Response
advocates questions such as: (1) What do you want to share with us or make us aware of in regards to your student or family? (2) How can we best partner to ensure your/your student's academic and personal success? (3) What would a culturally responsive reengagement plan look like to you? Responses to such questions should be considered when creating the reengagement plan. Questions such as these can set a positive tone, elicit relevant information and facilitate effective collaboration between schools, students and families.	
10. Commenter urged OSPI to develop guidance to "make it clear that cultural responsiveness requires both self-reflection and an effort to understand others. The rules should make it clear that in order to develop culturally responsive and culturally sensitive re-engagement plans, the educators, students and families should have opportunity to consider the cultural values of the student and family and the cultural dynamics of the classroom and school to which the student will be returning. They should consider whether and how the cultural dynamics of the school or classroom might foster, or impede, a student's meaningful reengagement."	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
The commenter stated, "we hear frequently from families and educators about how the culture of a school or classroom can affect student behaviors, adults' perceptions of those behaviors, disciplinary responses, and the development or lack of development of positive relationships between students and adults in the schools. As the large majority of our state's teachers, principals, and superintendents are white, it is not surprising to find that the cultures of schools and classrooms often reflect the cultures they experience at home. Members of a group whose own culture reflects the 'norm,' are often unaware of how decisions they believe are objective or unbiased are indeed influenced by their particular set of cultural values."	
11. Commenters recommended that, in developing a reengagement plan, a school district must consider the educational services the student received during the exclusion."	No action taken. OSPI believes the commenters' recommendation is not necessary because WAC 392-400-710(2)(d) addresses their concern.
12. Commenter noted the reengagement plan should be a working document, not a checkbox. Reengagement plans should be individualized.	Comment noted. OSPI believes WAC 392-400-710(2) is sufficient to include the commenter's suggestions. The rule requires the school district collaborate with the student and parents to develop a culturally sensitive and culturally responsive reengagement plan tailored to the student's individual circumstances to support the student in successfully returning to school.

Comment Summary	Response
13. One commenter noted that a reengagement meeting	No action taken. In accordance with RCW
after a long-term suspension should be mandatory and not	28A.600.022, the final rules require school
optional. Without this planning process, the student's	districts to convene a reengagement meeting
successful return to the classroom is diminished.	with the student and parents to discuss a plan to
	reengage the student following any long-term
	suspension or expulsion.
14. Commenters noted that family members and other	No action taken. OSPI does not believe the
advocates should be allowed to participate in the	commenter's proposed change is necessary
reengagement meeting, and written notice of the long-term	because RCW 28A.600.022(1) provides that
suspension or expulsion include notice of this right.	"[f]amilies must have access to, provide
	meaningful input on, and have the opportunity to
	participate in a culturally sensitive and culturally
	responsive reengagement plan." OSPI
	encourages school districts to collaborate with
	the student's parents, family members, and
	community representatives to better understand
45 Commenter of the three hours through the best to the	the student's cultural and family norms.
15. Commenters noted that teachers should also be involved in the reangagement process so building administrators can	Comment noted. Nothing in the final rules
in the reengagement process so building administrators can	precludes a school district from involving
determine supports the teacher and the student may need	teachers in a reengagement process. When developing a reengagement plan, the final rules
before returning to school.	provide that a school district must consider
	supporting the student, parents, or school
	personnel in taking action to remedy the
	circumstances that resulted in the suspension or
	expulsion and preventing similar circumstances
	from recurring—which may necessitate teacher
	involvement when appropriate. See WAC 392-
	400-710(2)(e).
16. Commenters expressed concern that a student returning	Comment noted. OSPI intends to provide
to school may encounter embarrassment or teasing. They	technical assistance and guidance to assist school
recommend OSPI develop sample plans for small-group	districts, parents, and advocates in implementing
counseling that can be used to reengage students.	the rules.
17. Commenter noted the reengagement process should also	No action taken. OSPI believes the commenter's
focus on teachers' behavior and what support teachers need	proposed change is not necessary because WAC
to be successful in their interactions with the student.	392-400-710(2)(e) provides that, when
	developing a reengagement plan, the school
	district must consider supporting the student,
	parents, or school personnel in taking action to
	remedy the circumstances that resulted in the
	suspension or expulsion and preventing similar
	circumstances from recurring.
18. Commenter recommended the rules clarify that the	No action taken. Reengagement plans are
reentry conference or any terms imposed by the reentry	intended to support the student in successfully
conference do not delay beyond the terms of the	returning to school following a long-term
suspension.	suspension or expulsion. A reengagement plan
	should not impose terms on a student.
	Accordingly, OSPI does not believe the
	commenter's proposed change is necessary.

August 13, 2018

Page 86

Comment Summary	Response
19. Commenters recommended WAC 392-400-710(5) be	No action taken. OSPI believes the commenter's
amended to add the following: "Reengagement meetings	proposed language is unnecessary because it is
supplement, but do not replace, any meetings or evaluations	addressed adequately in WAC 392-400-020(2).
required by WAC 392-172A-05140 through 392-172A-05175,	
20 U.S.C. 615, and 34 C.F.R. 300.530 through 300.536."	

#### 1-AA. WAC 392-400-805. Fundamental rights.

Comment Summary	Response
Commenter recommended adding to rules a prohibition on strip searches.	No action taken. OSPI believes the commenter's proposed change is not necessary because RCW 28A.600.230(3) bars school principals, vice principals, or anyone acting under their direction from subjecting a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070.
2. Commenter recommended adding to the rules the change in RCW 9.91.160 that allows students over the age of fourteen to carry "protective spray devices" as long as they have parent permission.	No action taken. OSPI believes the commenter's proposal is outside the scope of these rules.

### 1-BB. WAC 392-400-810. Long-term suspensions and expulsions administered by another school district.

Comment Summary	Response
1. Commenter expressed support for WAC 392-400-810,	Comment noted. See response to 1-BB-2.
stating that such rules are essential.	
2. Several commenters expressed concern that the	Action taken. OSPI agrees with several of the
proposed rules would limit a school district's ability to	concerns raised by commenters regarding OSPI's
uphold suspensions administered by another school district	proposed rules specifically regulating long-term
to students who pose an immediate and continuing ganger	suspensions and expulsions administered by
to students or school personnel, which may result in	other school districts—in particular, concerns
unnecessary litigation. Commenters noted that, without	raised regarding the administrative feasibility of
knowing the context regarding the student's behavior, it	implementing the proposed rules. Accordingly,
would be difficult to know if a student's presence would	the final rules omit any provisions explicitly
pose an immediate and continuing danger to other students	related to long-term suspensions and expulsions
or school personnel when they arrived to enroll.	administered by other schools districts
In addition, commenters noted that the student should not	However, OSPI's decision to omit such language
be entitled to move somewhere else to receive educational	from the final rules should not be construed as a
services when they are already entitled to receive	determination that OSPI believes students who
educational services from the original district who	have been suspended or expelled by one school
suspended or expelled the student.	district can be made subject to the terms of that
	suspension or expulsion by another district
Commenters recommended that the rules allow a student	without the second district affording the student
on suspension or expulsion in one district to use the same	minimum due process procedures. See WAC 392-
appeal process outlined in WAC 392-400-465 in another	400-025(7); WAC 392-400-025(14); WAC 392-
district. One commenter noted, "Just as the decision to let a	400-430. OSPI intends to provide technical
student on suspension back into a school rests with the	assistance and guidance to assist school districts,
suspending school district, not the student, so should the	

August 13, 2018

Comment Summary	Response
decision of admittance rest with the district that the student	parents, and advocates in implementing the
would like to transfer to. In the appeal process outlined in	rules.
[WAC 392-400-465], the original district can consider such	
factors as the student's potential immediate and continuing	
disruption, but according to the proposed language, the	
transfer district is limited to only considering potential	
danger. Using the appeal process as outlined above for	
admission to a new district would provide the opportunity	
for a student to get a fresh start without putting the district	
in jeopardy of enrolling a disruptive student."	
3. Commenter noted that their school district's online	Comment noted. See response to 1-BB-2.
choice enrollment system does not ask about discipline. A	
student will enroll in the program before the school district	
learns of the disciplinary matter, which can put the school in	
a terrible position because they otherwise might not have	
accepted the student.	
4. Commenter recommended OSPI clarify whether a	Action taken. See response to 1-BB-2.
student who moves into a new school district may enter	
school even though they are suspended or expelled in	
another school district.	
5. Commenter asked why the proposed rule would allow a	Action taken. See response to 1-BB-2.
school district to continue to administer a long-term	·
suspension or expulsion administered by another school	
district if the student's presence would pose an immediate	
danger but not an immediate threat of disruption. The	
commenter noted it feels like students are avoiding	
discipline. The commenter also noted the new district would	
have to go through the same disciplinary process of the	
original district.	
6. Comment stated WAC 392-400-810(1) lacks common	Action taken. See response to 1-BB-2.
sense. The commenter noted that the new school district	
would be able to second guess the first school district's	
determination that the student poses an imminent danger.	
The commenter also noted that it prevents the new school	
district from continuing to administer another school	
district's long-term suspension for behavior that presented	
an imminent threat of material and substantial disruption to	
the educational process. Moreover, the commenter noted	
that this may incentivize students and parents to leave their	
current school district when they get long-term suspended	
so they can avoid the suspension.	
7. Commenters recommended WAC 392-400-810 be	Action taken. See response to 1-BB-2.
amended to add the following: "Within 10 business days of	·
the superintendent or designee's decision regarding the	
suspension or expulsion, the student or parent may appeal	
that decision to the school board."	

#### 1-CC. WAC 392-400-815. Behavior agreements.

#### **Comment Summary** Response Comment noted. 1. Commenters expressed general support for including new rules on the use of behavior agreements, including the requirement that districts adopt policies governing behavior agreements and the provision limiting behavior agreements to one academic term. Commenters expressed concerns that behavior agreements are widespread, vary significantly across the state, and are often onerous and trap students in a cycle of punishment, rather than providing supports or resources that promote improved outcomes. 2. Commenters recommended revising WAC 392-400-815 No action taken. OSPI believes the commenters' to ensure that behavior agreements comply with due proposed language is not necessary. First, process, and contain conditions that support schools and behavior agreements must be in response to students in addressing behavioral incidents. WAC 392-400specific behavioral violations under WAC 392-815 should be revised to: 400-815(1), and, OSPI believes, must therefore rationally relate to the violation. Second, WAC • Require that conditions in behavior agreements be rationally related to the behavioral violation that gave 392-400-815 must be construed in a manner rise to the agreement; consistent with, among other things, RCW 28A.165.035, regarding the state menu of best Require that behavior agreements incorporate practices and strategies for behavior. See WAC evidence-based strategies; Limit behavior agreements to an academic term; and 392-400-020(2)(e). Accordingly, OSPI would expect that school districts would consider Ensure that students have the full panoply of due evidence-based behavioral intervention process protections if they are suspended or expelled strategies, where appropriate, when entering due to a violation of a behavior agreement. into behavior agreements under WAC 392-400-815. Third, under WAC 392-400-815(4), the duration of behavior agreements must not exceed the length of an academic term. Finally, nothing in the final rules suggests that students who are subsequently disciplined for behavioral violations that were the basis of a behavior agreement do not enjoy the full range of due process protections provided for in these rules and under law. 3. Commenter noted that collaborative behavior Action taken. OSPI agrees with the commenter agreements are more likely to lead to success. Commenter that limited-English proficiency parents should recommended that parents and guardians participate in not have barriers to entering into behavior creating behavior agreements and that schools provide the agreements under WAC 392-400-815. agreement in the parents' and student's native language. Accordingly, the final rules provide at WAC 392-Commenter recommended that districts report—and OSPI 400-815(6) that school districts must ensure that track—how many behavior agreements are implemented any behavior agreement under this section is and their outcome. provided in a language the parents and student understand. OSPI does not agree with the commenter,

however, that the rules should require at this time that districts report the number and outcome of behavior agreements they enter into. While OSPI agrees that this data would be helpful

Comment Summary	Response
4. Commenter noted that a policy and procedure regarding behavior contracts would be vague because each behavior	for the agency and other policymakers, additional student-level data reporting categories of the sort the commenter recommends here would need to be approved by OSPI's K–12 Data Governance Group under RCW 28A.300.042. The K–12 Data Governance Group may also work with the Education Research and Data Center (ERDC) to implement potential data elements and data quality improvements in accordance with the procedures under RCW 43.41.400(2)(d).  Comment noted. The purpose of the district policies and procedures under WAC 392-400-
contract would be written differently.	815(2) is simply to authorize the use of behavior agreements.
5. One commenter recommended the duration of behavior agreements not be limited to the length of an academic term. They noted they could see a year-long contract related to communication between the school and home, and bag checks, for example.	No action taken. Because behavior agreements frequently are in lieu of suspensions or expulsions or to hold a suspension or expulsion in abeyance, OSPI adopted the limitation of an academic term for behavior agreements to align with RCW 28A.600.020(6), which states that any suspension or expulsion "must have an end date of not more than the length of an academic term". Nothing in the final rules precludes school districts, following the length of an academic term, from entering into subsequent behavior agreements with a student that are unrelated to a specific behavioral violation.
6. Commenter requested OSPI clarify what a behavioral agreement is and what is involved.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
7. Commenter noted that the proposed regulation for behavior agreements does not include parents or families. The commenter noted discomfort with their child signing an agreement with an adult without their presence or knowledge.	Comment noted. WAC 392-400-815(1) provides that school districts may enter into behavior agreements with students and parents.
8. Commenters recommended WAC 392-400-815 be amended to add the following: "Violation of the terms of the behavior agreement. If a student violates the terms of a behavior agreement, the school may impose the balance of any suspension or expulsion held in abeyance (up to the end of the academic term), provided that the district complies with the relevant provisions of WAC 392-400-430 through 480."	No action taken. OSPI believes the commenter's proposed language is not necessary because nothing in the final rules suggests that students who are subsequently disciplined for behavioral violations that were the basis of a behavior agreement do not enjoy the full range of due process protections provided under WAC 392-40-430 through 392-400-480.

### F. WAC 392-400-820. Firearm exceptions.

Comment Summary	Response
1. Commenter suggested this section be cross-referenced throughout the rules for clarity.	Action taken. OSPI agrees with the commenter's proposed language, and the final rules have been amended as suggested.
2. Commenter noted adding the word "appears" to WAC 392-400-820(2) adds clarity that this section could apply to an object that looks like a firearm depending on how a student is using it.	Comment noted.

### G. WAC 392-400-825. Corporal punishment, restraint, and isolation.

Comment Summary	Response
Several commenters expressed concern that the	No action taken. WAC 392-400-825(1) generally
language in WAC 392-400-825 is inconsistent with	bars school districts from administering corporal
Washington's law on restraint and isolation. Commenters	punishment—that is, any act that willfully inflicts
encouraged OSPI to remove the term "maintain order" from	or willfully causes the infliction of physical pain
WAC 392-400-825 to maintain consistency between this	on a student. The rule goes on spell out a handful
section and the statute on restraint and isolation.	of exceptions to this rule. One of these, WAC
	392-400-825(1)(a), provides that the prohibition
Commenters noted that the proposed rule prohibits the use	on corporal punishments does not apply when
of corporal punishment, but excludes from that definition	district personnel needs to maintain order or to
"reasonable physical force by [school staff] as necessary to	prevent a student from harming themselves,
maintain order" Yet, RCW 28.600.485 defines	other students, school personnel, or property.
"restraint" as any physical intervention or force used to	
control a student, and prohibits the use of restraint only as	Separately, WAC 392-400-825(2) provides that
necessary to control spontaneous behavior that poses an	school districts may not use restraint, isolation,
imminent likelihood of serious harm. This is a significantly	or a restraint device on students, except where
higher standard than force used to "maintain order." While	otherwise authorized by statute. Restraint and
WAC 392-400-825(4) references restraint and isolation, the	isolation are not the same thing as corporal
chapter does not explain the connection between	punishment under the rule. Accordingly, the
"reasonable physical force" and "restraint," and may give the	exceptions to the prohibition on corporal
misleading impression that physical force can be used to	punishment provided in WAC 392-400-825(1) are
"maintain order" even when there is no imminent likelihood	not intended to apply to restraint or isolation.
of serious harm. Commenters suggested that this may	
increasing the use of physical restraint on students with	Because the final rules do not allow school
disabilities.	personnel to use restraint or isolation to
	maintain order, OSPI believes the commenters'
	proposed change is not necessary.
2. A commenter noted that regulations regarding corporal	Commented noted.
punishment, restraint, and isolation promote negative	
behaviors because students know they cannot be touched.	

# Comments regarding the supplemental proposed rules, filed February 21, 2017 (WSR 18-05-099)

#### 2-A. General Comments

Comment Summary	Response
School Safety and Educational Environment	
Comment Summary	Response
1. Commenter requested OSPI reform the current rules and regulations regarding student discipline, noting the current laws do not make students and staff safe, and they do not prepare the offending student for the real world.	Action taken. See response to 1-A-2.
2. Commenter noted that we need to think of the safety and learning of children and not sacrifice them for the sake of a few disruptive students.	Comment noted.
3. Commenter shared their personal experience as a teacher and their issues with disruptive and misbehaving students in the classroom. They shared an example of a student stabbing a classmate with a pencil but being allowed back to the classroom because of special education protections. It was hard for the rest of the students to learn because they were worried they would get stabbed.  The commenter asked how teachers are supposed to educate when they have students that don't care about the learning environment and continue to display all manners of misbehavior. It seems logical that educational leadership in Olympia would want the most bang for their buck, but they are turning a blind eye to the biggest roadblock in the way of students being able to learn.  They observed that students who prevent other students from learning and teachers from teaching should be	No action taken. OSPI disagrees with the commenter's suggestion that the final rules compromise school safety. One purpose of the rules under WAC 392-400-010(8) is to ensure that school districts provide a safe and supportive learning environment for all students. A host of provisions in the final rules—including rules governing emergency expulsions (WAC 392-400-510(1)), long-term suspensions and expulsions (WAC 392-400-440(2), WAC 392-400-445(2), petitions to extend expulsions (WAC 392-400-810), the protection of victims (WAC 392-400-810), and firearm violations (WAC 392-40-820)—are intended to address student behavioral violations that harm or threaten to harm others.
from learning and teachers from teaching should be removed from the classroom, and students with patterns of disruptive behavior should lose their right to a public education. The commenter requested OSPI change the rules and laws so they are able to do their job without the disruption of misbehaving students.	However, as recognized in state and federal laws, school climate can be negatively impacted when school districts overuse exclusionary discipline practices. The final rules are accordingly designed to be consistent with the Every Student Succeeds Act (ESSA), which requires state plans include how the state will support school districts "to improve school conditions for student learning, including through reducing the overuse of discipline practices that remove students from the classroom". ESSA, Section 1111(g)(1)(C)(ii).  The minimum procedural and substantive due process rights contained in the final rules are intended to protect the interest of all students when they may be subject to discipline in Washington school districts during their K–12

educational experience.

Comment Summary	Response
4. Commenter shared their personal experience of being	Comment noted.
classmates with a student whose disruption was frustrating	
and wasted class time. The commenter noted that this	
student directly threatened them, and they were scared	
and unable to concentrate. The commenter stated that	
school personnel said they could not remove this student.	
The commenter asked OSPI to do something so students	
do not have to go to school with a student who is hurting	
them or making them unable to concentrate.	
5. Commenter shared their personal experience of being	No action taken. See response to 2-A-3.
classmates with a student who was "always doing	
something inappropriate," including spiting his food out,	
touching other students, and saying racist and	
inappropriate things to teachers and other students. The	
commenter noted that this student should have been	
kicked out of school years ago. "It's not fair to us good kids	
who follow the rules and never get in trouble, but these	
other kids are causing all kinds of problems and get no	
consequences." The commenter asked OSPI to make it so	
these students have consequences for their choices and are	
kicked out of school when they need to be so other	
students can learn and be safe.	
6. Commenter shared their personal experience as a	Action taken. See response to 1-A-2.
parent of a student who was threatened by another	
classmate. The commenter noted that while they support	
many aspects of the proposed rules, they are very	
concerned that limitations on removals remain in the rules	
and that the rights of victims are not adequately protected.	
The commenter stated that these limitations prohibit	
school staff and school districts from effectively protecting	
students and ensuring they have a positive learning	
environment.	
7. Commenter shared their personal experience of	Comment noted.
attending a school where a student fired a weapon. The	
commenter noted that this student has previously been	
expelled from a different school district, but he was	
allowed to attend their high school.	
The commenter suggested they want laws in place that do	
not allow these students to be in the classroom but also get	
them the help they need to participate in classrooms in the	
future. When students are allowed to return to school after	
multiple suspensions, it takes a toll on the students who are	
actively learning and complying with school policies.	
The current laws are failing because disruptive and harmful	
students can transfer into new schools without receiving	
help.	
· ·	

Comment Summary	Response
8. Commenter noted that there has been a gradual societal eroding of parental child discipline, and school districts have to deal with more disrespectful, disruptive, and unstable or violent students. The commenter shared an example of how their grandchild was threatened by an unstable student.  The commenter noted that the focus of public schools providing sound, stable, healthy, and safe learning experiences is disrupted when dealing with unruly students. The commenter expressed concern that the discipline rules allow abusive and dangerous students ridiculous rights and tie the hands of the education system. "We must decide whether we want to provide a safe environment for our children to obtain an education or harbor unstable and dangerous individuals."	Comment noted. See response to 2-A-3.
9. Commenter noted that all students and faculty have a right to be in a safe environment. Anyone who is a threat to themselves or others needs to be removed and treated accordingly.	Comment noted.
10. Commenter recommended that students should be able to learn in a space free from disruptive behavior and dangerous students. The commenter shared examples of students and school personnel being injured and physically abused by students and expressed concern that nothing is being done to protect people from this behavior. The commenter noted the discipline laws are the reason this continues to happen.  The commenter suggested unpredictable students be removed from class and school as long as needed, without any limits.	No action taken. Limitations on the maximum length of a suspension or expulsion are established in statute under RCW 28A.600.020(6). Limitations on the types of behavior for which a district may consider long-term suspension or expulsion are established in statute under RCW 28A.600.015(6). Consistent with RCW 28A.600.020(6), the final rules maintain a petition process to exceed the academic term limitation "[w]here warranted based on public health or safety" under WAC 392-400-480. Also, consistent with RCW 28A.600.015(3), the final rules allow a district to administer emergency expulsion under emergency circumstances. In addition, the final rules do not limit school districts from taking a range of appropriate actions to respond to threats or aggressive behavior without resorting to suspension or expulsion—including using a threat assessment to manage or reduce a threat posed by a student.
11. Commenter noted that students and teachers should be able to be free from harm and disruption on a daily basis. "How many more headlines do we need to read and see in the news before this disruption and destruction ends? This needs to come to an end period. There should be no grey area."	Comment noted.

Page 94

#### Students with Disabilities

12. Commenter shared their personal experience of being a parent of a student with medical issues and disabilities. They expressed concern about their child going into kindergarten soon, worried that the system is not supportive of young children, specifically those with health and disability issues.

The commenter expressed appreciation to legislators and educations who have advocated for comprehensive and equitable discipline policies, including Senate Bill 5155, which focuses on suspensions for young children.

Comment noted.

#### **Comment Summary**

OSPI should prioritize inclusive and comprehensive equitable policies, so low-income children facing homelessness, home life dysfunction, food shortages, and inability for families to afford childcare services during suspension. The commenter also noted that continuing to punitively discipline children and their families, instead of providing preventative support services, will feed into the school-to-prison pipeline.

13. Commenter shared their personal experience as a parent of several children with special needs, including severe trauma, ADHD, PTSD, major depressive disorder, and severe anxiety. The commenter noted that often the first reaction is suspension or removal from the classroom, which only further exacerbates problems for the students. Without a trauma-informed approach, behaviors can be seen as defiant and out of control, when they are in fact a reaction to what they see as confrontation.

The commenter recommended that we need to encourage and empower our schools to change their approach to discipline and look more closely at the adverse childhood effects so many students experience. We also need to provide ongoing education about trauma and how it can affect behavior. The commenter also noted cultural awareness and bias must also be emphasized, as a disproportionate number of children of color receive more frequent and harsher discipline.

The commenter noted that OSPI has an obligation to educate all children, even those who demonstrate difficult behavior. The commenter recommended OSPI create trauma-focused discipline rules and allocate more funds toward this effort.

Response

No action taken. OSPI believes the commenter's proposed changes are not necessary for several reasons. First, the final rules are consistent with RCW 28A.600.015(7), which provides that, with the exception of firearms violations, school districts are not required to impose suspension or expulsion for any behavioral violation and should first consider alternative actions.

Likewise, the final rules are consistent with the Every Student Succeeds Act (ESSA), which requires state plans include how the state will support school districts "to improve school conditions for student learning, including through reducing . . . the overuse of discipline practices that remove students from the classroom". ESSA, Section 1111(g)(1)(C)(ii).

In addition, OSPI has developed, published, and provided training on the Behavior Menu of Best Practices since 2015. Since the 2016 update, the behavior menu has included a section on Multi-Tiered Systems of Support (MTSS); a "Content Philosophy" section that addresses social-emotional learning (SEL), cultural responsiveness and equity in student discipline, school climate, and using exclusionary discipline as a last resort; and "Trauma-Informed Approaches" is a best practice included in the menu. OSPI updates the menu annually to incorporate new research and resources.

Comment Summary	Response
	OSPI is also developing discipline training modules in accordance with RCW 28A.415.410 that will cover best practices and laws related to student discipline within the context of Washington K–12 educational settings. Information about the training materials, including preliminary resources and a link to the behavior menu, can be found on the OSPI website at: Student_Discipline_Training
14. Commenter noted that their school district is working	Finally, WAC 392-400-020 of the final rules provides that the rules must be construed in a manner consistent with (1) RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and (2) RCW 28A.415.410, regarding training to support school personnel in implementing discipline policies and procedures. Those resources provide clear guidance on best practices regarding behavior and discipline.  Comment noted.
to reduce exclusionary discipline, and they have appreciated the district's responsiveness to community concerns about the negative effect of discipline on families. The commenter noted that as a parent of a student with special needs, they have heard that schools "just don't have the resources" to meet students' needs. The commenter hopes someday the state will fully fund special education.	Comment noted.
15. Commenter expressed concern about their experience as a parent of a student with a disability. They believe their school district is barely meeting the needs of students and is placing students in special education in segregated classes. The commenter requested stronger rules that protect students and families from unjust policy practices.	No action taken. The final rules apply to all students, including students receiving special education services, and the final rules are not inconsistent with existing state or federal laws—including the rules for the provision of special education under Chapter 392-172A WAC. The application section of the final rules clarifies that the proposed rules must be construed in a manner consistent with existing state and federal laws concerning students receiving special education services—including anti-discrimination laws that protect students under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act.

August 13, 2018

Comment Summary	Response
16. Several commenters recommended OSPI open	Comment noted.
rulemaking specific to disproportionate discipline of	
students with disabilities. Commenters noted that special	
needs students make up about a third of the students	
disciplined in their district while they make up only 17% of	
all students. One commenter suggested that having more	
guidance may help school districts with best practices and	
create more equitable procedures.	
17. Commenter shared their personal experience of being a	Comment noted.
parent of a student with disabilities who has been	
suspended multiple times. The commenter noted it	
seemed most of the suspensions were related to the	
student's special needs. The commenter strongly suggested	
OSPI open rulemaking specific to discipline of students with	
disabilities.	
18. Commenter shared a quote from the Washington State	Comment noted.
Governor's Office of the Education Ombuds report on	
students with disabilities: "The evidence is clear that	
disabilities do not cause disparate outcomes, but that the	
system itself perpetuates limitations in expectations and	
false belief systems about who children with disabilities can	
be and how much they can achieve in their lifetime."	
19. Commenter recommended OSPI create separate rules	Comment noted. These final rules establish
regarding suspensions for students with disabilities and	minimum substantive and procedural due process
behavioral disorders, and these rules should be specifically	rights of all students when they may be subject to
connected to students' individual circumstances.	discipline in Washington school districts. This
	includes students with disabilities. Additional rules
	specific to discipline of students in special
	education are addressed in WAC 392- 172A-07045.

Comment Summary	Response
20. Commenter questioned why special education rules	No action taken. See response to 1-A-6.
were not included in the proposed rules, noting they have	
not been rewritten in a long time. The commenter	
questioned why special education is not fully funded and	
why it's at the bottom of the process barrel. The	
commenter suggested it should be the top priority because	
students in special education suspended and expelled at	
three times the rate and 65% of children in juvenile	
detention of a disability and we want to stop the school-to-	
prison pipeline. The special education rules are not the	
focus when we know these students are more likely to be	
suspended and have more problems. It causes hardship for	
families that are going through trauma.	
The commenter noted that the special education process is	
difficult and it's supposed to be collaborative. However, the	
commenter shared their personal experience as a parent of	
a student in special education who was emergency	
expelled, nothing that it does not feel like a collaborative	
process when you are in a meeting with ten people who	
say they do not understand the student's disability while	
also saying it had nothing to do with why they were	
suspended.	
The commenter also noted that when a child who has a	
learning disability is suspended for any number of days, it's	
a huge loss of ability to learn.	
The commenter observed that the state seems to care	
about children of color being incarcerated at higher levels,	
but we are not taking a systemic look at the school system.	
OSPI needs to look at the age of consent, intensive	
wraparound services, social emotional learning, zero	
tolerance policies, etc. The commenter noted they have	
seen discussion about this coming out of OSPI with the	
children's mental health workgroup, but OSPI needs to	
work together to look at everything.	
21. Commenter shared the personal experience of their	Comment noted.
student who has experienced trauma and also has mental	
and physical disabilities. Their student has been suspended	
and expelled, and they experienced stigma of being	
considered a "bad kid." "How does it help our children if	
they don't want to be at school anyway because of the	
stigma and thoughts of always being a bad kid?" The	
commenter believes that if the school had taken steps to	
make environmental changes, evaluate the student for an	
IEP, and better understand the student's disability sooner,	
their student would not have to overcome obstacles and	
be so traumatized by school.	
·	<u>L</u>

Comment Summary	Response
22. Commenter shared the personal experience of their	Comment noted.
student who had been diagnosed with PTSD. The	
commenter tried to get the student supports through a	
Section 504 plan, but the plan did not start right away. The	
student had a difficult time and was suspended and	
expelled multiple times. The commenter wishes the school	
used their resources well before repeated suspensions and	
expulsions for a student they know is struggling.	
23. Commenter suggested that current discipline policies	Comment noted. See response to 1-A-27.
do not serve students with ADHD and these students are	
systemically discriminated against for not measuring up to	
an arbitrary standard of behavior. The commenter shared	
their personal experience as a parent of a student with	
ADHD, who was disciplined in school. The commenter	
recommended that students and their families be included	
in a meaningful discussion about policies that best support	
the dignity of students.	
Best Practices and Alternatives to Suspension	
24. Several commenters recommended OSPI provide	No action taken. See response to 1-A-19.
stronger guidance on alternatives to suspension and	
expulsion, and require schools to use alternatives in every	
instance.	
One commenter shared their experience as a parent whose	
student with a disability was sent home from school	
repeatedly. It took a bold, radical change from the school	
to help him, including restorative practices, de-escalation	
techniques, a stable school environment, and a lot of	
patience.	
25. Commenter noted that RCW 28A.165.035 does not	Comment noted.
include strategies for behavior but is about appropriate use	
of LAP funds.	_
Comment Summary	Response
26. Commenter expressed support for school districts using	Comment noted.
mediation, and recommended OSPI do whatever could be	
done to encourage schools to do this.	
27. Commenter stated that when students need credit	Comment noted.
retrieval because of a suspension or expulsion, there are few	
options for the students, and they are pushed toward or	
tracked in to alternative settings, which may not necessarily	
be appropriate for the student. The commenter noted they	
would like to see other options besides alternative schools	
available for parents when their child is behind in credits. On	
top of being behind in credits, many students also have	
learning disabilities or other barriers to their access to	
education.	

Comment Summary	Response
28. Commenter shared their personal experience with	Comment noted.
trauma, poverty, substance abuse disorder, and	
incarceration, and how they have seen it also playing out in	
their children's lives. The commenter noted that they were	
lucky to be able to access legal help to advocate for their	
student to develop a Section 504 plan and encourage	
restorative practices in the school. The commenter noted	
they were grateful their school district was willing to work	
with parents in the community to support the use of	
restorative practices as the first line of defense in all	
behaviors. The commenter expressed support use of	
restorative practices because they believe it helps children	
have better outcomes and it helps school culture.	
29. Commenter suggested that suspension rates could be	No action taken. OSPI agrees with the
decreased if schools use proper interventions, including	commenter that evidence-based behavior
social emotional learning. The commenter recommended	intervention strategies can have the effect of
the rules suggest how a school district should intervene to	reducing rates of exclusion. However, OSPI
address situations.	declines to adopt the commenter's proposed
	change because OSPI believes it would unduly
	complicate district practices that necessarily
	focus on highly fact dependent circumstances.
	In addition, OSPI does not believe the proposed
	change is necessary for the reasons identified in
	the response to 2-A-13.
30. Commenter expressed the need for clear and consistent	No action taken. See response to 1-E-11.
guidelines on suspensions, and alternatives to suspension	·
should be the expectation.	
31. Commenter suggested that compliance with many of	Comment noted.
these proposed rules would be a distraction, rather than a	
pathway toward, meaningful interventions. The	
commenter recommended the priority should be culturally	
responsive practices, classroom climate and culture, parent	
and student engagement, and trauma-informed practices	
paired with rigorous instruction with pathways toward	
focused student outcomes.	
32. Commenter noted that educators do not want to	Comment noted.
suspend students. "When exclusion from school is utilized,	
it is only because it is the last tool at the bottom of our	
toolbox to keep school safe and supported for all students	
to focus on academic growth." The commenter observed	
that if the purpose of the policy is to increase the amount	
of time student spend safely at school, teachers need to be	
equipped with better means to do that, including the	
following: access to mental health, wraparound services,	
better professional development for culturally responsive	
classroom strategies, longer recess, increased staffing for	
full implementation of restorative justice, more music and	
art, smaller class sizes, curricula that reflect	
neurodevelopmental best practices, and support for	
educators to innovate ways to implement social emotional	
regulation and relationships within schools.	

August 13, 2018

Parent Engagement	
33. Commenter expressed appreciation for the proposed	Comment noted.
rules giving parents more opportunity to engage and	
requiring cultural competency.	
34. Commenter recommended that the rules include	Action taken. See response to 1-A-30.
stronger language regarding how a school district needs to	
act when reaching out to parents and guardians before a	
suspension, expulsion, or arrest. In the legal system, more	
representation is allowed than in the way the proposed	
rules work. If a kid needs to be removed from a class due to	
an emergency situation, the school should still have to	
contact a parental figure before casting judgment.	
35. Commenter suggested that parents should always be	Comment noted.
involved when suspensions occur.	
36. Commenter observed that many of their school	No action taken. The final rules provides that
district's non-English speaking families, as well as many of	school districts must provide notice to limited-
their low-income English-speaking families, do not read	English proficient students consistent with Title
academic literature in their home language at a very	VI of the Civil Rights Act of 1964 whenever the
competent level, nor do they always receive written	district removes a student from class (WAC
information from school in an efficient way. Many of these	392- 400-335(2)) or school (WAC 392-400-
families move a lot or are living with others and do not	455(3)).
have middle-class structures to process written information	· //
coming home. The commenter suggested that parents	
need to be contacted orally by someone in their own	
language whenever their student was being excluded from	
class or school.	
Disproportionate Discipline	
37. Commenter suggested rules should be in place to solve	No action taken. See response to 1-A-95.
the problem of disproportionate discipline of students with	·
special needs and students of color.	
38. Commenter noted there is a lot of disproportionate	Comment noted.
ways people are treated in their community. The	
commenter stated that OSPI needs to lead and inspire	
communities to treat people with respect. There are subtle	
Comment Summary	Response
and not subtle ways people with differences are discriminated	
against.	
Implementation of rules	
39. Commenters noted concern about the timeline for when	Action taken. See response to 1-A-65.
the rules will go into effect. One commenter noted that	
student discipline handbooks must be prepared in advance for	
fall publication and the school district is hoping to not include	
an addendum. Other commenters stated that school districts	
will need sufficient time to craft and disseminate policies and	
procedures, and train school staff before the school year	
begins. "It is impossible to attempt to validly engage with	
families or the community between mid-June and the start of	
school."	

August 13, 2018

Implementation of rules	
40. One commenter noted that due to significant delays in	Action taken. See response to 1-A-65.
the rulemaking, implementation of the new rules will need	
to be set for the 2019–20 school year, and the school	
district will not implement any change to the rules in the	
2018–19 school year.	
41. Commenter expressed concern that the substantial rule	Action taken. See response to 1-A-65.
changes will require significant changes in how schools	
administer discipline. The commenter expressed concern	
that there may be unintended consequences as a result of	
some of these well-intentioned but perhaps too over-	
reaching and possibly too much due process being afforded	
to rule violators but not enough protections for victims.	
The commenter recommended delaying implementation of	
the proposed rules until after several districts "pilot" the	
new rules for a school year to provide relevant and real-	
time feedback.	
The commenter also noted that the proposed rules will add	
many new requirements for school districts in terms of	
providing resources for students and staff, but funding is	
not included to assist schools in meeting the new	
requirements. With the passage of HB 2242, many districts	
will suffer a significant loss of local levy revenue. Many	
school districts have used levy dollars to help struggling	
students and to provide opportunities and support for	
students who have had significant discipline issues.	
students who have had significant discipline issues. 42. Commenters thanked OSPI for holding a public hearing	Comment noted.
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it	Comment noted.
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for	Comment noted.
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.	
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline	
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.	Comment noted. See responses to 1-A-79 and
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary	Comment noted. See responses to 1-A-79 and 1-A-81.  Response
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary  44. Commenter questioned how OSPI was going to enforce	Comment noted. See responses to 1-A-79 and 1-A-81.
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary  44. Commenter questioned how OSPI was going to enforce some of the wonderful intentions in the rules, including	Comment noted. See responses to 1-A-79 and 1-A-81.  Response
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary  44. Commenter questioned how OSPI was going to enforce some of the wonderful intentions in the rules, including instruction. The commenter shared their personal experience	Comment noted. See responses to 1-A-79 and 1-A-81.  Response
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary  44. Commenter questioned how OSPI was going to enforce some of the wonderful intentions in the rules, including instruction. The commenter shared their personal experience of having a student who is missing school and is not receiving	Comment noted. See responses to 1-A-79 and 1-A-81.  Response
students who have had significant discipline issues.  42. Commenters thanked OSPI for holding a public hearing outside of ordinary business hours, noting they hoped it would enable more parents and folks who don't do this for a living to participate in the process.  43. Commenter questioned how OSPI was keeping people in the loop about the public comments to the discipline rules and what changes were made based on the comments. The commenter noted it is difficult to track as a parent who is an outsider to the system, and suggested the process was not as transparent as OSPI was hoping it would be.  Comment Summary  44. Commenter questioned how OSPI was going to enforce some of the wonderful intentions in the rules, including instruction. The commenter shared their personal experience	Comment noted. See responses to 1-A-79 and 1-A-81.  Response

August 13, 2018

Comment Summary	Response
45. Commenter requested language to make clear what	No action taken. See response to 1-A-89.
happens if a school district does not follow these	·
procedures. If a child does not request a hearing within the	
required time, they don't get the hearing. But the	
commenter questioned what happens to a district when	
they do not follow procedures. "If the result of not	
following that and not providing due process within the	
required time is not that the student returns to school,	
then what is it?"	
46. Commenter expressed concern about the	Comment noted. OSPI intends to provide
understandability of the rules, noting that school	technical assistance and guidance to assist
administrators who provided comment on the proposed	school districts, parents, and advocates in
rules did not seem to understand them. "When I see	implementing the rules.
administrators read these proposals and think that they	
would not be able to emergency expel students who have	
posted pictures of themselves with AR-15s, or who are	
talking about suicidal ideations, there is a lack of	
understandability in these WACs." The commenter noted	
that when administrators are not understanding the rules,	
they imagine that parents are also not understanding them.	
Other General Comments	
47. Commenter shared their personal experience as a	Comment noted.
parent of a student who was suspended multiple times,	
expressed support for a prohibition on expulsions. The	
commenter suggested that we are just reiterating bad	
behavior, and we are not really getting to the core of what	
the problem is. "What we're doing now isn't working so	
we're going to remove him and just from being out of	
school for one day, his outlook on, on his capability of	
coming back in to be able to catch up, I mean it was shot."	
48. Commenter recommended the rules explicitly prohibit	Action taken. OSPI agrees with the commenter
school districts from removing students from school for	that emergency expelling a student for
attempted suicidal behavior. The commenter noted this	attempting suicide is not an appropriate
has been happening for decades, and they provided an	intervention. First, WAC 392-400-510(1)(a)
example of a client who was emergency expelled when	applies only in cases where there is an
they were in crisis. The commenter stated this is the wrong	immediate and continuing danger to "other
use of school discipline, and it is really painful for families.	students" or school staff. Second, OSPI has
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	revised the final rule to provide that, beginning
If OSPI needs to come up with a different set of regulations	in 2019, "an immediate and continuing threat
to address the needs of students with acute healthcare	of material and substantial disruption of the
crisis, that may need to happen. Commenter also noted	educational process" under WAC 392-400-
that OSPI has a similar provision in the rules that prohibits	510(1)(b) means (1) the student's behavior
suspension and expulsion for truancy.	results in an extreme disruption of the
	educational process that creates a substantial
	barrier to learning for other students across
	the school day, and (2) school personnel have
	exhausted reasonable attempts at
	administering other forms of discipline to
	support the student in meeting behavioral
	expectations. See WAC 392-400-510(2).
	5.,peetationis see 117 to 552 400 510(2).

August 13, 2018

Comment Summary	Response
49. Commenter recommended the rules explicitly prohibit	No action taken. OSPI declines to adopt the
school districts from removing students from school when	commenter's proposed changes because it
they are in crisis. The commenter noted that, in addition to	believes that imposing obligations on districts
the different menu of options that school districts should	to provide appropriate evaluations or health-
have before administering a suspension or expulsion, there	related interventions to students in crisis is
should also be some language in the rules about	beyond the scope of this rulemaking.
appropriately evaluating the student and making sure they	
are accessing services that should be available to them	However, OSPI notes that, starting in 2019, WAC
through multi-tiered systems of support.	392-400-110 requires school districts to adopt
	policies and procedures that 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 behavioral
	expectations. These 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, which
	includes trauma-informed approaches and
	behavioral health.
	In addition, the final rules provide that districts
	must generally attempt other forms of
	discipline before excluding students in non-
	emergent cases. <i>See</i> WAC 392-400-330, WAC
50 Comments and that the last one missing and an	392-400-435.
50. Commenter noted that students are missing out on	Comment noted.
instruction from being sent home but just as importantly	
from being in classrooms that are disrupted by extreme behaviors.	
51. Commenter suggested every student needs to have the	Comment noted.
appropriate placement along with support educators to	Comment noted.
provide the best instruction possible.	
52. Commenter shared their personal experience as a	Comment noted.
parent of a student who was suspended over a hundred	Comment noted.
times between grades K–4. The commenter observed that	
their student learned that every time they were in an	
uncomfortable situation at school, they could act up and	
they would be sent home, where they are comfortable and	
safe.	
Saic.	

Comment Summary	Response
53. Several commenters noted that suspensions and	No action taken. See response to 1-A-95.
expulsions are deeply harmful to students, schools, and	
communities. Students who are suspended or expelled are	
significantly less likely to graduate, and more likely to end	
up involved in the criminal justice system. This not only	
costs our community in terms of damaged school climate,	
lost wages, and increased social costs, but it represents a	
massive loss of potential.	
The commenters recommended OSPI adopt discipline	
regulations that ensure suspension and expulsion are rare	
and that give schools tools to eliminate the	
disproportionate suspension and expulsion of students of	
color and students with disabilities.	
54. Commenter noted that they have spoken with parents	Comment noted.
who cannot consider getting a job because their students	
are suspended so often, even students in elementary	
school. They noted that does not set up a student to be	
successful and have a positive relationship with school.	
55. Commenter expressed appreciation for OSPI's	Comment noted.
commitment to clarifying student discipline regulations and	
aligning them with current statutes.	
Commenter also noted that while they share OSPI's goals	
of reducing exclusionary and disproportional discipline and	
working toward ways to prevent behavioral issues through	
our district-wide implementation of social and emotional	
learning practices, they recognize some areas of the	
proposed regulations that could benefit from the practical	
concerns of our administrators. Their comments derive	
from their need for functionality and flexibility to respond	
to a vast array of student behaviors that occur every day in	
the high-pressure environment of a school.	
56. Commenter expressed concern that approximately	Comment noted.
\$10,000 is spent per student each year whereas \$95,000 is	
spent per inmate each year. Wouldn't we rather spend	
more money to support students then to create inmates?	
57. Commenter expressed support for the new	Comment noted. Refer to response to 1-A-95.
collaborative approach to school discipline. The commenter	
shared their personal experience as a parent of students	
who have been penalized for behaviors that other students	
are not penalized for. The commenter also noted they	
hoped someone would look into the suspension rate at the	
school and question the discrepancy in incidents and length	
of removals.	00011 19 19 19 19
58. Commenter suggested that with the influx of police in	No action taken. OSPI believes that the
schools, the proposed rules need to have language that	commenter's proposed change is beyond the
protects students from police reaction and harm. Police in	scope of these rules.
schools should not have any direct contact with students	
related to discipline.	

August 13, 2018

Comment Summary	Response
59. Several commenters noted that requiring reporting of	Comment noted.
classroom removal, clarifying that language access rights	
apply at all stages of disciplinary proceedings, limiting	
emergency expulsions to instances where the student's	
behavior poses an imminent risk to students or staff, and	
requiring parental contact before an informal conference	
with principals when a student is facing long-term	
suspension will help ensure that parents can play a	
meaningful role in working with schools and can help	
minimize unnecessary exclusion from the classroom.	
60. Commenter thanked OSPI for its initial round of	Comment noted.
consideration of comments on the proposed rules,	comment noted.
including ensuring language access is consistent throughout	
the discipline process and provisions for tracking classroom	
removals. Both will have a significant impact on trying to	
increase equity and fairness in the discipline process.	Comment noted
61. Commenter noted that they understand OSPI finds	Comment noted.
itself in the midst of a very difficult process, and that this	
has been a long and laborious effort. They know that OSPI	
is striving to strike the balance between adequate due	
process and avoiding procedures that are unduly	
burdensome on public school districts, while at the same	
time attempting to capture the changing legislation in	
chapter 28A.600 RCW that complicates this process.	
62. Commenter observed their organization is receiving an	Comment noted.
increased number of calls related to student discipline.	
Families and community professionals are seeking greater	
clarity regarding what students can expect for alternative	
education services, and what processes exist to address	
concerns with the adequacy or appropriateness of those	
services. Additional questions are coming up around when	
to begin re-engagement planning, and what to include for	
consideration in a re-engagement plan. The commenter	
expressed appreciation that the revised proposed rules will	
provide increased detail on these issues.	
63. Several commenters noted that while they have	Comment noted.
concerns about the proposed rules, they are committed to	
recent laws that help schools educate students during	
suspensions and expulsions and that prohibit exclusionary	
discipline for minor discipline offenses. "We understand	
and appreciate the responsibility given to us as local	
educators to do what's best for all students."	
64. Commenter expressed concern about what "as soon as	Comment noted. See response to 1-Y-17.
reasonably possible" means when providing notice to	
parents in a language they understand. The commenter	
notes their school district serves students who speak 47	
different languages. How will districts be supported in	
translating conferences or documents?	

# 2-B. WAC 392-400-010. Purpose.

Comment Summary	Response
Commenter requested clear strategies and	Comment notes. See response to 1-A-95.
accountability for how to "improve fairness and equity in	·
administration of discipline." They noted it is currently up	
to the district on how deep they want to consider this	
information.	
2. Several commenters expressed concern that the	Action taken. See response to 1-A-2.
purpose section of the rules focuses on the rights of	·
students who violate rules, giving no consideration to the	
rights of educators to ensure a positive and safe learning	
environment. The commenters noted that RCW	
28A.600.020(1) require OSPI's rules to be "interpreted to	
ensure that the optimum learning atmosphere of the	
classroom is maintained, and that the highest consideration	
is given to the judgment of qualified certificated educators	
regarding conditions necessary to maintain the optimum	
learning atmosphere." The commenters recommended the	
section be amended to include "The purpose of this	
chapter is to ensure that school districts in Washington:	
(1) Provide a safe and optimum learning atmosphere for all	
students.	
(2) The judgment of qualified certificated educators is given	
deference regarding the conditions needed to maintain a	
safe and optimum learning atmosphere for all students."	
3. Commenter suggested revising the purpose subsection	Action taken. OSPI agrees with the
"Improve fairness and equity in the administration of	commenter's proposed language, and the final
discipline." The commenter noted that school districts take	rules have been amended as suggested.
strong exception to the message "improve" implies. The	
commenter recommended "promote" or "ensure" would	
send the same strong message.	
4. One commenter suggested OSPI's perspective on	Comment noted.
student discipline seems myopic, focusing solely on the	
students being disciplined. The commenter noted that	
student discipline is not just about the student's being	
disciplined; it is also about maintaining a "beneficial	
learning environment for all students."	
5. The commenter also stated that OSPI's rules have	
neglected the important need to focus on maintaining	
school-room and school-wide decorum. This focus is for the	
benefit of all students, regardless of status or distinguishing	
characteristics. Merely reducing the number of suspensions	
and expulsions (or imposing overly burdensome rules for	
classroom exclusions) without considering the underlying	
behavior of students or the impact on the school-wide	
climate does nothing to help achieve a more beneficial	
learning environment for all students. Rather, it tends to	
create more disorderly classrooms and more unhealthy	
school climates because of an over-emphasis on reducing	

Comment Summary	Response
the number of excluded students regardless of whether	
those students substantially disrupt the learning	
environment or harm other students who have come to	
school to learn.	
6. The commenter urged OSPI to reconsider the purpose	
and focus of its proposed discipline rules. "Does OSPI	
simply want to reduce the numbers of suspensions and	
expulsions—regardless of the educational impact? Or does	
it want to actually help create a more beneficial learning	
environment for all students? If it desires the latter, then	
OSPI should consider giving local educators the flexibility	
and discretion they need to maintain a beneficial learning	
environment. Because when it comes to maintaining a	
beneficial learning environment, there is no one better at	
that than local educators."	
7. Commenter suggested the purpose section of the rules	Action taken. See response to 1-A-2.
should acknowledge school districts' legal obligations to	
protect school safety and to maintain an effective learning	
environment. The commenter acknowledged the potential	
for discipline processes to be abused due to conscious or	
unconscious bias, but not noted that a school's motive for	
imposing discipline is not always negative. Exclusionary	
discipline is at times necessary to maintain a safe school	
climate and to ensure that teaching and learning can occur.  The commenter recommended OSPI add a subsection to	
the purpose stating "impose discipline when necessary and appropriate to maintain a safe and secure learning	
environment."	
Commenter noted that small school districts cannot	Comment noted.
hire a resource officer or a teacher to babysit students who	Comment noted.
are causing so much problem. The commenter noted that	
things started going downhill when laws went into effect	
where you could not really discipline or a touch a student.	
9. The commenter suggested that administrators are	Comment noted.
scared that families will bring lawsuits against schools if	5511111511511511
their children are removed and noted that we have to think	
about the other children in the classroom who are not	
represented.	
10. Commenter noted there should be absolutely no excuse	Comment noted.
for a very disruptive or violent student from being removed	
from the classroom immediately, and there needs to be	
immediate consequences. Violent students need to be	
removed immediately. Death threats should be added to	
the "big three" of carrying a gun, selling drugs, or inflicting	
serious bodily harm.	
11. Commenter shared the personal experience of a parent	Comment noted.
whose student received threats by another student at	
school. The school refused to remove the other student,	
and the parent had to get a restraining order. They also	

August 13, 2018

Page 107

Comment Summary	Response
shared experiences of parents removing their students	
from school because of all the disruption and lack of	
learning, which is costly to a small school district.	
12. Commenter recommended that teachers need access	Comment noted.
to training support in emotional and behavioral supports	
for students. The commenter shared their experience as a	
parent of a student with disabilities who was well	
supported in school by a teacher who had mental health	
and therapy experience.	

# 2-C. WAC 392-400-015. Authority.

Comment Summary	Response
No comments	

### 2-D. WAC 392-400-020. Application.

Comment Summary	Response
No comments	

### 2-E. WAC 392-400-025. Definitions.

Comment Summary	Response
Commenter recommended OSPI further define	Action taken. See response to 1-A-84.
"culturally responsive discipline policies and procedures."	
Commenter stated that many educators could have	
different interpretations of what this phrase means. "This is	
the heart of some big fundamental changes and shift in	
strategies to overcome years of institutionalized racism. I	
think that we need to provide specific examples and	
training in this area, and some way of showing	
accountability."	
2. Several commenters expressed support "culturally	No action taken. See response to 1-A-84.
responsive" being defined in the rules, but expressed	
concern that the definition (a reference to cultural	
competency in RCW 28A.410.270) falls short of the intent	
of HB 1541. The commenters suggested the definition	
should be more closely aligned to the Educational	
Opportunity Gap Oversight and Accountability Committee	
(EOGOAC) definition of cultural competence, which	
requires educators to be "cognizant of systemic racism and	
the inequities of the public education system." One	
commenter noted "racism, implicit bias and internalized	
racial oppression manifests not only at the interpersonal	
and instructional level, but also at the policy and systemic	
level as well - to the disadvantage of entire communities	
(particularly black and brown communities). Thus, in	
addition to focusing externally on students and families to	

Comment Summary	Response
understand their contexts and histories and adapt instruction accordingly, schools must also be focused internally to identify the ways in which dominant culture marginalizes students and families, and commit to adapting systemically."	
The commenters recommended OSPI modify the definition "to ensure that schools are focused internally (to identify and commit to changing the ways in which dominant school culture can marginalize students and families) in addition to externally (to understand the contexts and histories that students and families bring)."	
3. Commenter noted the definition for "culturally responsive" makes sense.	Comment noted.
4. Commenter suggested the "classroom exclusion" mean "the exclusion of a student from a classroom or instructional or activity area by a teacher"	No action taken. OSPI believes the definition for "classroom exclusion" in the final rules is sufficiently clear and not inconsistent with the statutory provisions under RCW 28A.600.020(2).
5. Commenter suggested the definition of emergency expulsion include the "immediate and continuing threat of material and substantial disruption of the educational process" language.	Action taken. See response to 1-E-7.
6. Commenter suggested the "short-term definition" definition be listed before the "long-term suspension" definition.	No action taken. OSPI believes that listing definitions in alphabetical order improves clarity and readability.
7. Commenter expressed support for the proposed definition of expulsion in WAC 392-400-025(7). However, they recommended the definitions for short-term and long-term suspension have the same "denial of attendance from any subject or class" language. The commenter noted that "excluded from school" is too vague.	No action taken. OSPI believes the proposed change is not necessary because the final rules' definition for "suspension"—which "means a denial of attendance in response to a behavioral violation from any subject or class" (WAC 392-400-025(14))—is inclusive of the definitions for short-term suspension and long-term suspension.

# 2-F. WAC 392-400-110. Discipline policies and procedures—Development, review, and distribution.

Comment Summary	Response
1. Commenter recommended WAC 392-400-110(h) be	Action taken. OSPI agrees with the
revised to state "establish grievance procedures to resolve	commenter's proposed language, and the final
address parents' or students' disagreements grievances	rules have been amended as suggested.
." The commenter noted that sometimes it is not possible	
to resolve disagreements.	
2. Commenter suggested WAC 392-400-110(k) be revised	No action taken. OSPI believes the term used in
to read "Provide for the return of students who have been	WAC 392-400-110(k) is consistent with RCW
suspended or expelled as soon as possible whenever	28A.600.022(3), which provides that a
consistent with public health or safety." The commenter	suspended or expelled student may "petition
noted that "readmission" is not generally a term used in	for readmission."
school districts, and RCW 28A.600.020 and 28A.600.022	

August 13, 2018

Page 109

Comment Summary	Response
mention "returning" students to the educational setting.	
Further, the commenter noted there are some students	
who will not return to the regular educational setting after	
a suspension or expulsion because of state law or based on	
public health and safety concerns.	
3. Commenter recommended OSPI be really clear in WAC	No action taken. OSPI believes the commenter's
392-400-110(2) that school district should be monitoring	proposed change is not necessary for the
the impact of discipline on disproportionality, to both	reasons provided in the response to 1-A-95.
students of color and students with disabilities; educational	
outcomes; school safety and climate, and the opportunity	
gap.	
4. Commenter suggested the distribution of policies and	No action taken. OSPI believes the proposed
procedures requirement in WAC 392-400-110(3) explicitly	change is not necessary because the final rules
include the ability for a school district to distribute the	allow districts flexibility in determining how to
policies and procedures by distributing information	disseminate discipline policies and procedures
regarding how to access the discipline policies and	in a manner consistent with the statutory
procedures on the district's website.	requirement under RCW 28A.320.211(1).

## 2-G. WAC 392-400-330. Classroom exclusions—Conditions and limitations.

Comment Summary	Response
1. Commenter suggested that if WAC 392-400-330(1)(b)	Comment noted. Actions by school officials
allows a playground paraeducator to remove a student	taken in response to behavioral violations that
from a play area for misbehaving in dodgeball, it would be	do not exclude students from the classroom,
cumbersome and unnecessary to require the school to	instructional or activity areas, or deny
follow the due process and notification requirements. The	attendance or admission to a student's current
commenter also questioned whether a student being held	school are "other forms of discipline" under
in from recess the day after a behavioral violation would be	WAC 392-400-023(5) and WAC 392-400-025(9).
treated as a suspension.	The final rules do not treat other forms of
	discipline as suspensions.
2. Commenter expressed appreciation for the clarification	Comment noted.
in WAC 392-400-330(3)(b), that a removal from school	
would require notice and due process for a suspension,	
expulsion, or emergency expulsion.	
3. Commenter noted it appears the right of a teacher to	No action taken. The language in the final rules
continue to exclude a student from the teacher's classroom	is not inconsistent with the statutory provision
for the rest of the school day, which was previously	under RCW <u>28A.600.020(</u> 2) regarding a
included in WAC 392-400-230 and 392-400-290, has	teacher's authority to exclude a student from
disappeared. The commenter stated "it is a severe harm to	the teacher's classroom—including the
the status and classroom management practices of a	statutory provision regarding the principal and
teacher to be forced without consultation or right of	teacher conferring. Districts may adopt
objection to have a student who was sent to the office to	discipline policies and procedures regarding the
be sent back again the same day without discussion,	means by which the principal or designee and
agreement or explanation. Other students will tend to view	the teacher should confer that, consistent with
such arbitrary return as indicating that individual teachers	law, clarify district expectations in accordance
have no power at all to maintain discipline."	with collective bargaining agreements entered
	into by the district.

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018
Page 110

#### 2-H. WAC 392-400-335. Classroom exclusions—Notice and procedure.

#### **Comment Summary** Response No action taken. OSPI believes it is authorized 1. Commenter recommended OSPI strike proposed WAC 392-400-335, suggesting it has no basis in current statute, under RCW 28A.600.015 and RCW 28A.600.020 and it appears to be an overreach of OSPI's rulemaking to adopt rules prescribing students' substantive authority. The commenter noted the grievance process for and procedural due process rights regarding classroom exclusions has no basis in current statute. The forms of discipline, as classroom exclusions, commenter also noted the process is so burdensome and that are not suspensions or expulsions. Indeed, such a departure from current practice, it will act as a the prior rules provided a grievance procedure deterrent to the teacher's exercise of their statutory right for "discipline" - defined in former WAC 392to exclude a disruptive student from their classroom, cause 400-205(1) as all forms of corrective action confusion and delay in collective bargaining, and interfere other than emergency removal from a class, with school districts' obligation to protect the educational subject or activity, suspension, or expulsion and process from unnecessary disruption. including 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. In accordance with the agency's rulemaking authority under RCW 28A.600.015, OSPI believes a grievance procedure related to the administration of classroom exclusions and other forms of discipline should remain in place to adequately protect the due process interests of students. Unlike the prior rules, which proscribed a grievance procedure at the building, district, and school board levels with specific timelines, the final rules allow districts flexibility to establish grievance procedures that at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation. WAC 392-400-110(1)(h). Moreover, the language in the final rules is not inconsistent with the statutory provision under RCW 28A.600.020(2) regarding a teacher's authority to exclude a student from the teacher's classroom—including the statutory provision regarding the principal and teacher conferring. Districts may adopt discipline policies and procedures regarding the means by which the principal or designee and the teacher should confer that, consistent with law, clarify district expectations in accordance with collective bargaining agreements entered into by the district. 2. Commenter expressed concern that when students are Action taken. See response to 1-G-2. excluded for a short amount of time for a student conference or to reset expectations, the time and

August 13, 2018

Comment Summary	Response
coordination it would take to meet the reporting and	
notification requirements could significantly impact a	
teacher's schedule and result in lost instructional minutes	
for an entire group of students.	
3. Commenter suggested the reporting requirements for	Comment noted.
classroom exclusions may delay a student's return to the	
classroom. The commenter also noted the reporting	
requirement "wastes our time, energy, and resources for a	
significant amount of systemic monitoring of something	
that can be better addressed at each schoolhouse."	
4. Commenter noted WAC 392-400-335 regarding	Comment noted.
classroom exclusions in emergency circumstances is a good	
place to eliminate the "immediate and continuing threat of	
material and substantial disruption to the educational	
process" language rather than in the emergency expulsion	
definition.	
5. Several commenters expressed concern that the	Action taken. See response to 1-G-2.
classroom exclusion reporting, parent notification, and	
grievance requirements impose undue burdens on	
classroom teachers, building administrators, and	
superintendents. "We all have much better things to do	
than deal with minor classroom exclusions that teachers	
can be trusted to address in a classroom setting."	
A commenter also noted that many students eligible for	
special education have behavior plans that allow them to	
take breaks to self-regulate, and the classroom exclusion	
requirements would apply to these situations.	
Another commenter noted these requirements would get	
in the way of important one-on-one relationships between	
teachers and students.	
The commenters recommended WAC 392-400-335 be	
deleted or revised to establish a reasonable condition upon	
which notification and reporting requirements are	
triggered.	
6. Commenter suggested WAC 392-400-335 appears	Action taken. See response to 1-H-3.
overbroad in regards to the reporting requirements. The	
commenter noted this seems like an extreme workload	
issue as there can be multiple classroom exclusions per day	
and classroom exclusions are generally tracked on paper	
(rather than in a student information system). The	
commenter observed that in an informal poll of one school,	
they estimated they had between 10–20 classroom	
exclusions per day, and in a district of their size, that could	
result in over 100,000 reports to the superintendent each	
year. The commenter also noted that an exclusion for	
behavior reasons could include asking a student who is	
having a bad day to step out and regroup to addressing the	

August 13, 2018

Comment Summary	Response
behavior of a student who is flipping over desks. "Giving	
that span equal weight of importance in reporting will	
result in either underreporting or workload issues." The	
commenter recommended the reporting requirement be	
limited to exclusions in emergency circumstances.	
7. Commenter noted that the new reporting requirements	Comment noted.
for classroom exclusions will mean someone will have to	
enter all classroom exclusions into the school's data	
system, including when students are sent to buddy	
classrooms, out in to the hall to reflect, or held in for	
recess.	
8. Commenter expressed concerns about the practicality	Comment noted.
of proposed reporting requirements for classroom	
exclusions. The commenter shared their experience as the	
principal of an elementary school, noting that five-minute	
breaks in the hallway happen regularly, or teachers might	
send a student to another classroom for five minutes. The	
commenter noted the additional reporting requirements	
would add to an already busy load of managing the duties	
and responsibilities that happen in the school.	
Commenter questioned how classroom exclusions will	Comment noted.
be reported, and how there will be a full picture presented	
by the district regarding classroom exclusions, suspensions,	
and expulsions.	
10. Commenter noted that their school is trying to create	Comment noted.
an environment where relationships are at the core of	
learning, and sometimes teachers need a thirty second	
conversation in the hall to build a relationship with the	
student, retain the student's dignity, and the return them	
to class. The commenter stated that if they get bogged	
down in some procedure, they are afraid their teachers are	
going to be breaking the law when they're just trying to	
support students.	
11. Commenter noted it is insulting to be told that OSPI	Comment noted.
thinks that teachers are not documenting enough and that	
they can't make a professional judgement call to give a	
student a break in the hallway, another classroom, or the	
office. They shared their personal experience as a teacher	
and the substantial amount of documentation and	
meetings they have to engage in on a daily basis. The	
commenter brought a 3-inch stack of documentation as an	
example of paperwork they have to complete. The	
commenter noted these strategies help avoid more	
suspensions because they allow students to de-escalate in	
a productive way. The commenter also noted they do not	
want to feel like they are tattling on their students to	
administrators and parents. OSPI should focus instead on	
how to support schools with more mental health support	
rather than increasing workloads for people who work with	
, ,	

August 13, 2018

Page 113

Comment Summary	Response
12. Commenter stated that proposed reporting and parent notification requirements for classroom exclusions are probably well intentioned to build more communication with families, but they come with unintended consequences. The commenter suggested that, with the	Comment noted.
new requirements, teachers may hesitate to have restorative conversations with students in the hallway or send them to another room to deescalate. The commenter also noted that teachers may pass these issues to administrative staff, which may send a negative message to students.	
The commenter also observed that schools may have to notify parents about multiple issues every day, and families already hear from the school a lot. The commenter noted that it could unintentionally result in parents' micromanaging their students.	
13. Commenter noted that some of the languages in their school district are unique, so they would have to go through a process of connecting with interpreters to assist with parent notifications of classroom exclusions.	Comment noted.

## 2-I. WAC 392-400-430. Suspensions and expulsions—General conditions and limitations.

Comment Summary	Response
1. Commenter noted how important parents, guardians,	Comment noted. OSPI intends to provide
and families are in supporting their child in school, and the	technical assistance and guidance to assist
earlier involvement they have the better. The commenter	school districts, parents, and advocates in
recommended OSPI provide more explicit guidance and	implementing the rules.
expectations to districts on what "early involvement"	
means. The commenter observed they have seen a trend in	
parents in crisis who are navigating public education when	
they know or suspect their student has a disability, or	
behavioral issues arise, and it's very challenging for parents	
to make informed decisions or feel like they have all the	
information they need. "Early involvement" means going	
beyond just notifying the parent, but also giving them	
options to help support the whole family.	
2. Commenter stated that they believe WAC 392-400-	Comment noted.
430(2) regarding considerations before administering any	
suspension or expulsion is unnecessary because it is the	
norm. "However, it is an important section if the pendulum	
starts swinging all the way back to the days of 'No	
Tolerance' discipline policies."	
3. Commenter expressed concern that the proposed	No action taken. See response to 1-E-8.
language requiring a school to consider the student's	
"individual circumstances" will invite the very	
disproportionality that OSPI and districts are striving to	
minimize, and it is "likely to result in a patchwork quilt of	

August 13, 2018

Comment Summary Response	
disciplinary sanctions based on personal characteristics	
rather than the offense." The commenter suggested the	
U.S. Department of Education, Office for Civil Rights would	
be unlikely to endorse this approach. The commenter	
recommended a school district should be required to	
consider the nature and circumstances of the behavioral	
violation, not the student's individual circumstances.	
	noted. OSPI intends to provide
	ssistance and guidance to assist
·	ricts, parents, and advocates in
	ing the rules.
	aken. See response to 1-E-8.
"individual circumstances" related to students must be	
considered.	
One commenter shared the personal experience of their	
student, who was bullied and sexually assaulted at school	
and suffered from PTSD. Their student had to remain in	
school with the student who assaulted them. The	
commenter noted the school was aware of this, and they	
should have considered this when deciding on disciplinary	
actions.	
6. Commenter shared their personal experience as a Comment r	noted.
parent of a student who received in-school suspension. The	
commenter observed that their student was not receiving	
comparable services, and he went from decent grades to Fs	
over the period of six days in in-school suspension. The	
commenter expressed support for the rules mandating that	
students who have disruptive behavior are not harmed in	
their education.	
7. Commenter suggested renaming the section heading Action take	n. OSPI agrees with the
]	r's proposed language, and the final
	been amended as suggested.
faith on the part of school districts and is inappropriate in	
state regulations.	
8. Commenter suggested the proposed WAC 392-400- Action take	en. OSPI agrees with the
430(3) implies a school district may suspend the provision commenter	r's proposed change, and WAC 392-
of educational services, provided they do not prevent a 400-430(3)	has been amended to clearly
	e two independent clauses.
graduation requirements. The commenter recommended	
OSPI revise this subsection to more closely track RCW	
28A.600.015(8).	
9. Commenter expressed concern regarding a statement Comment r	noted.
on OSPI's website: "Even for serious types of behavior,	
state law encourages districts to consider actions other	
than suspension or expulsion. The proposed rules	
encourage schools to use best practices to address	
behavior without removing students from the classroom."	
1	
The commenter questioned whether OSPI has provided a	

Comment Summary	Response
noted it appears that OSPI assumes school administrators	
automatically use suspension as the first step when dealing	
with serious student misbehavior, and suggests that if so,	
the proposed rules should be suspended until OSPI has	
investigated numerous school districts regarding how they	
handle discipline. The commenter stated that principals	
work very hard to avoid suspending students, but there are	
situations that warrant immediate suspension. "Students	
and staff need to feel safe in our schools and the need to	
know certain types of behaviors will not be tolerated."	
10. Commenter questioned whether OSPI gave	Comment noted.
considerable thought to the rights of victims. The	
commenter expressed concern that by encouraging schools	
to not suspend students, the proposed rules neglect the	
rights and needs of students or staff who have not broken	
any school district rules, but who may feel their right to an	
education or to learn or work in a safe setting is being	
violated.	
11. Commenter recommended WAC 392-400-430(4)	No action taken. OSPI declines to adopt the
should be revised to state "a school district must provide a	commenter's proposed language because it
<u>reasonable</u> opportunity for students to receive educational	believes the language is not consistent with
services during a suspension or expulsion"	RCW 28A.600.015(5), RCW 28A.600.015(8), and
	RCW 28A.600.020(7) regarding the provision of
	educational services during suspension or
	expulsion.
12. Commenter shared their experience as an	Comment noted.
administrator and noted that they have seen an increase of	
parents of victims being very angry when a perpetrator is	
returned to school because their kids are not feeling safe.	
It's admirable that changes have been put in place to help	
students return to school, but we need more time to see	
how the changes already put in place play out. Commenter	
requested OSPI not bring back every student to school at	
sometimes an unreasonably shortened length of time.	
13. Commenter suggested that administrative transfers	Action taken. See response to 1-I-16 and 1-I-19.
should not be allowed.	
14. Several commenters expressed concern that the	Action taken. See response to 1-I-16 and 1-I-19.
proposed WAC 392-400-430(4)(b) gives students a vested	
right to return to their "regular educational setting" at the	
end of a suspension or expulsion, when RCW	
28A.600.020(6) says a school district must "make	
reasonable efforts to assist students and parents in	
returning to an educational setting." The commenters	
suggested that they need flexibility to remove students	
from their regular educational setting. The commenters	
shared examples of when it might be in everyone's best	
interest to prohibit returning a student to their	
neighborhood school, including situations where a sexual	
assault victim is still attending or where the student may be	
subjected to gang influences. One commenter noted that	

Comment Summary	Response
there are times when the courts mandate that a student	
return to an alternate setting directly as a result of the	
behavior. The commenters also noted that sometimes it's	
in the best interest of a student to remain in a smaller	
setting where the offender can more easily learn social and	
emotional skills. Some commenters recommended the	
subsection allow a school district to preclude students from	
returning to their regular educational setting if the district	
deems it in the best interest of the student or district. One	
commenter noted that decisions on a student's educational	
setting are best left to school district administrators who	
know the students personally and can tailor the setting to	
the individual student's needs.	
15. Commenter noted that their school district will	Comment noted.
sometimes transfer a student to another school to help	
everyone feel safe and get a fresh start, especially when	
there is a victim involved. The commenter expressed	
concern that the proposed rules keep districts from making	
decisions that work best for the situation, student, and	
community.	
16. Commenter recommended the prohibition of	Action taken. See response to 1-I-16 and 1-I-19.
administrative transfers be clarified to allow school districts	·
to take reasonable steps to prevent foreseeable harm to	
students, including transferring of a student who has	
exhibited aggressive behaviors in violation of school policy.	
The commenter recommended the following revision to	
WAC 392-400-430(4)(c): "(c) Nothing in this section	
precludes a school district from administratively	
transferring a student, provided that the basis for the	
transfer is not the student's violation of the district's	
discipline policy under WAC 392-400-110 in the best	
interest of another student(s) or a staff member(s) who has	
been targeted or victimized by the transferring student	
during his violation of the district's discipline policy	
adopted under WAC 392-400-110. A student may not be	
administratively transferred based solely on their violation	
of the district's discipline policy."	
17. Commenter stated that schools need an option to	Comment noted.
move students to other schools. The commenter shared	
their personal experience as a principal of an elementary	
school and a situation involving an older student who	
assaulted a younger student and was a "constant	
offender." The commenter noted that, to protect the	
younger student and bring calm to the older student's	
classroom, they moved the older student to an alternative	
classroom setting away from the general education setting.	
After the older student was moved, the younger student's	
attendance increased and he was doing well academically.	
18. A commenter noted it is important to involve a family	Comment noted.
· · · · · · · · · · · · · · · · · · ·	

August 13, 2018

Comment Summary	Response
administratively transfer a student in situations where they	
need to protect victims and other students. Denying this	
ability sends a message about the school culture that will	
impact victims, relationships, and the educational	
environment of the school.	
19. Several commenters expressed concerns with WAC	Comment noted. See response to 1-I-16 and 1-I-
392-400-430(4)(c) regarding administrative transfers,	19.
commenting that the proposed language will open the	
floodgates to further exclusion of students from the	
educational process. The commenters noted transferring a	
student has serious repercussions, similar to the negative	
impacts of suspension and expulsion. The commenters	
shared examples of how administrative transfers can	
function as an extension of suspension and expulsion and	
negatively impact student engagement in school. The	
commenters also observed that administrative transfers	
are expressly permitted by many district policies, but none	
of the policies they reviewed include a mechanism for	
parents or students to challenge the basis or validity of an	
administrative transfer. The commenters urged OSPI to	
strike WAC 392-400-430(4)(c) language or, at a minimum,	
define "administrative transfer" narrowly to ensure that	
students are not deprived of educational benefits by virtue	
of the transfer, and provide an opportunity for students	
and parents to challenge whether the basis of the transfer	
is the student's behavioral violation, suspension, or	
expulsion.	
20. Commenter suggested that without further guidance,	Comment noted. See response to 1-I-16 and 1-I-
the reference in WAC 392-400-430(4)(c) to school districts'	19.
authority to "administratively transfer" students threatens	
to create confusion and potentially undermine provisions	
meant to ensure that students are not pushed out of	
traditional school programs due to behavior infractions.	
The commenter explains that a district might interpret the	
provision to mean a student who has completed the suspension or expulsion could be required to remain in an	
alternative program, not because of the misconduct that	
led to the discipline, but because of factors related to	
academic progress, credit accrual or relationships with	
other students or staff. The commenter recommends that	
if OSPI determines there are circumstances in which	
district-initiated administrative transfers would be	
appropriate as part of re-engagement planning, then OSPI	
should make that clear. The issue should be explicitly	
addressed in the sections on re-engagement plans. The	
rules should clearly specify what factors should be	
considered, and what would be legitimate bases for a	
district to require a transfer to a different program or	
school as part of re-engagement planning. The rules should	
include requirements for notice, opportunity to be heard	
The state of the s	

Comment Summary	Response
and an appeal process for students and families if they	
disagree with a district-initiated administrative transfer. In	
particular, the authority of a district to "administratively	
transfer" a student from a traditional school program to an	
ALE following a period of disciplinary removal should be	
specifically addressed.	
If OCDI determines there are singurateness in which	
If OSPI determines there are circumstances in which district-initiated administrative transfers would be	
appropriate as part of re-engagement planning, then OSPI	
should make it clear that that any school or program to	
which the student could be required to transfer must	
provide the same or greater access to programs, benefits	
and services as the student's original school.	
21. Commenter expressed concern about the	Comment noted. See response to 1-I-16 and 1-I-
administrative transfer provision. The commenter shared	19.
examples of clients who have been removed from school	
for weeks or months without the school district providing	
educational services, which affected their credits. It took an	
attorney to contact the school district to get the services.	
The commenter noted it might take more than one call,	
different forms of reaching out, to adequately	
communicate with a student or parents about the	
opportunity to receive services and make sure a connection	
happens.	
The commenter also expressed concern that when a	
student is not earning credit during a suspension or	
expulsion, they fall behind, and the school district might	
keep them in an alternative school because of their credit	
deficiency.	
The commenter recommended that if the rules address	
administrative transfers, there needs to be a clear process.	
Placement is school should be a joint decision between	
schools and families and students, as it is in almost every	
situation. The current language does not anticipate any sort	
of joint conversation.  22. Commenter recommended OSPI eliminate language	Action taken See response to 1   16 and 1   10
pertaining to administrative transfer after suspension and	Action taken. See response to 1-I-16 and 1-I-19.
expulsion. The commenter shared their personal	
experience as a parent of a student with disabilities who	
has been suspended multiple time. The commenter stated	
that the school administrators told them they orchestrated	
the suspensions to help the student qualify for special	
placement and did not give the commenter options for the	
student's placement. At the new school, the student	
continued to get suspensions and experienced physical	
assault. The commenter stated that decisions about school	
transfers should be a team decision with full family input.	

August 13, 2018

Comment Summary	Response
23. Commenters suggested the proposed rule prohibiting	Action taken. See response to 1-I-16 and 1-I-19.
administrative transfers when discipline policy has been	·
violated conflicts with 28A.600.020(7), which allows a	
student to receive education during a suspension or	
expulsion in an alternative setting, and appears to be an	
overreach of authority.	
24. Commenter suggested the proposed rule prohibiting	Action taken. See response to 1-I-16 and 1-I-19.
administrative transfers when discipline policy has been	·
violated may violate Title IX when a student who sexually	
harasses another student is allowed to return to their same	
classroom.	
25. Commenter observed that administrative transfers of a	Comment noted. See response to 1-I-16 and 1-I-
student after suspension or expulsion do not happen	19.
frequently, but if all parties agree the behavior will be	
improved with a transfer, it seems like a positive outcome	
for all involved.	
26. Commenter noted that their school district has had a	Action taken. See response to 1-I-16 and 1-I-19.
lens on discipline practices for the last three years, and	
they have attempted to balance the important need to	
ensure safety of their schools and students, and the	
positive learning environment that is critical to each	
student. They also work to meet the individual needs of	
students in discipline situations. The commenter stated	
that OSPI's proposed changes would impact their ability to	
do that balance.	
The commenter specifically highlighted the need to	
maintain flexibility as to the educational setting when they	
return a student to school after a suspension or expulsion.	
The commenter shared examples of needing to keep a	
sexual assault offender separate from the victim and	
protecting other possible victims. The commenter observed	
that sometimes a smaller environment has additional	
resources, such as mental health therapists and counselors,	
which may better meet the needs of a student. "One size	
school doesn't fit all situations and we need that	
flexibility." The commenter requested the rules allow a	
school district to preclude a student from returning to the	
student's regular educational setting if the district deems it	
is in the best interest of the student or the district.	
27. Commenter expressed concern about the language	Action taken. See response to 1-I-16 and 1-I-19.
added to the proposed rules that would allow schools to	,
unilaterally administratively transfer students to other	
settings, provided that the basis of the transfer is not a	
student suspension or expulsion. The commenter noted	
that in a review of policies of the 25 largest school districts	
in the state, most lack polies related to administrative	
transfers. The commenter suggests that if administrative	
transfers are happening, they are happening without	
oversight, review, or input from families. The commenter	
5.5.5.6.6, review, or input from furnites. The commenter	

Comment Summary	Response
also notes that the policies allow for a transfer as a result of	
suspension or expulsion, and one policy allowed a transfer	
as a result of punishment. The commenter expressed	
concern that the administrative transfer is a tool to	
continue to effectuate suspension, expulsion, or other	
exclusion, and none of the school district policies had due	
process or recourse attached to them. The commenter also	
noted that unilateral transfer of students has significant	
negative impacts, noting research that indicates any	
transfer has a significant impact on a student's grades,	
ability to graduate, and interpersonal relationships.	
The commenter strongly encouraged OSPI to remove the	
language from the rules, or at the very least, create more	
rigorous definitions of administrative transfer and require	
the setting the student is transferred to be comparable,	
adequate, and equitable to the setting they are being	
removed from.	
28. Commenter expressed concern about the provision	Action taken. See response to 1-I-16 and 1-I-19.
regarding administrative transfers, noting that it is harmful	
parents who have children. The commenter shared their	
personal experience of trying to buy a home within their	
student's current school district to avoid trauma of moving	
to a different school. Schools having the authority to	
administratively transfer students to other schools could be	
traumatizing. The commenter stated that when someone in	
the community is suffering, we should want to help them	
and bring them back, and not give up on them.	
29. Commenter recommended OSPI eliminate language	Action taken. See response to 1-I-16 and 1-I-19.
pertaining to administrative transfers. The commenter	
noted it is common in their school district for students to	
be transferred to an alternative school, especially students	
with disabilities, low-income students, students of color,	
and LGBTQ students. The commenter suggested that the	
school will transfer a student just because they student	
doesn't fit in, or any other difference, and it's not inclusive	
behavior. The commenter also noted that parents and	
students should be included and provide consent if a	
student needs a transfer.	Action taken See response to 1 L16 and 1 L10
30. Commenter opposed the proposed provision	Action taken. See response to 1-I-16 and 1-I-19.
prohibiting administrative transfers or reassignment of a student if the basis was a violation of the district's	
discipline policy. The commenter stated that schools need	
to be able to use their best educational judgement to	
decide what educational environment is best. The	
commenter shared an example about a student who	
experienced a lot of trauma and who often got in trouble.	
The school district transferred the student to a smaller	
alternative setting, where she was able to get wrap-around	
services, and she was doing much better. The commenter	
services, and she was doing madi better. The commenter	

August 13, 2018

Comment Summary Response	
expressed support for restorative practices, but noted that	
teachers have been doing restorative practice for decades.	
Schools also need to be able to transfer students to get	
them in the correct educational setting that will be best for	
them.	
31. Commenter expressed concern that the proposed WAC Action taken.	See response to 1-I-16 and 1-I-19.
392-400-430 provision regarding administrative transfers	
had not come up in previous discussions or drafts of the	
proposed rules, and it is not addressed in statute. The	
commenter stated administrative transfers are set in	
district policy, and it's not warranted to address it in the	
discipline rules. The commenter suggested it appears OSPI	
is inviting the use of administrative transfers within	
discipline and this is alarming. It runs the risk of essentially	
reverting or doing an end to the limitations on indefinite	
exclusions, which were brought about because of the	
disproportionate use of discipline on students of color.	
With this proposed rule, students can be indefinitely	
excluded from their school, and there is very little due	
process available to parents. The commenter noted that	
the proposed language says that the administrative	
transfer cannot be used for discipline purposes, but they	
suggest a school district could get around that relatively	
easily, noting a student is not a good fit for their school.	
The commenter also noted a school district could likely do	
this today, but by including it in the discipline rules, OSPI is	
not doing anything to alleviate the problem.	
Commenter stated that the discipline reforms were	
initiated in great part to concern of disproportionate use of	
discipline on students of color and students with	
disabilities, and this is an invitation in some ways to	
segregate students in violation of their civil rights.	
	See response to 1-I-16 and 1-I-19.
permitting a school district to administratively transfer a	
student after a suspension or expulsion, noting transfers	
are extremely disruptive to students. Some commenters	
observed it is common in their school district for students	
to be transferred to an alternative school after a	
suspension or expulsion, often justified because of a	
student's lack of credits or "good fit." Commenters	
recommended students should return to their	
neighborhood school unless the student and family consent	
to a different placement.	
33. Commenter expressed concerns about administrative Action taken.	See response to 1-I-16 and 1-I-19.
transfers, nothing reengagement may become meaningless	
if a student is not returning to the school with at least some	
agreement of the parents and the student. They are not	
repairing the harm; they're just going to a new school. The	

August 13, 2018

Comment Summary	Response
commenter recommended parents and students be	
included in that decision making.	
34. Commenter recommended that students who are in	No action taken. See response to 1-J-5.
grades K-4 should not be suspended or expelled unless	
they pose a substantial threat. The commenter expressed	
concern that schools are allowed students with disabilities	
and students who are developing at a high rate to be	
suspended for 10 days per term is crazy. Further, the	
commenter noted that teachers in their school district are	
not properly trained or supported for dealing with students	
with behavioral issues or disabilities. When issues arise, the	
campus resource officers are called to threaten the	
students.	
35. Commenter expressed concern that the proposed rules	Comment noted.
do not go far enough to provide necessary guidance for	
suspensions and administrators are not equipped to make	
fair, unbiased decisions in disciplining students of color and	
especially students with disabilities. The commenter	
observed that students with disabilities in their school	
district are already suspended because of their disabilities	
at a rate higher than the state average, and they have no	
faith that their student who has a disability will be treated	
fairly or equally. The commenter suggested that kids should	
be kept in school as a priority and each case considered to	
the specific circumstances of each student.	No ortion tolone Consumers to 2 A 2 and 2
36. Commenter stated that the current and proposed	No action taken. See responses to 2-A-3 and 2-
discipline rules fail to encourage discipline because they allow students to remain in school and continue disruptive	A-10.
and hurtful behavior, which is detrimental to the learning	
of others. They expressed concern that students who have	
behavioral problems or mental health issues are protected,	
but teachers are not. The commenter recommended OSPI	
remove limitations on suspensions, allow each school have	
at least one employee who can physically stop a violent	
student, and allow teachers to choose how to keep their	
classrooms safe and deal with disruptive behaviors.	
37. Several commenters expressed support for removing	No action taken. See responses to 2-A-3 and 2-
academic term and other limits on suspensions to avoid	A-10.
harm and ensure a safe and positive learning environment.	
Several commenters suggested a student should be	
suspended as long or as often as their behavior warrants.	
Commenters expressed concern that schools are aware of	
potentially violent students, but they are not able to do	
anything because of limitations on suspensions and	
expulsions.	
One commenter expressed they want their children's time	
in school be protected from other students that struggle	
with mental health or choosing to behave. One commenter	
suggested that students with behavior issues need to be	

August 13, 2018

Page 123

Comment Summary	Response
removed early on to receive help they need and prevent further harm to themselves and others. One commenter shared a personal story about a student being threatened by another student, who will eventually be allowed back in school.	
38. Commenter expressed support for eliminating out-of-school suspension at least from kindergarten to grade five.	Comment noted.
39. Commenter recommended there not be a limitation to the duration of a suspension, and suspensions should not be tied to the academic term they occurred in—they should carry forward to the next academic term.	No action taken. See response to 2-A-10.

## 2-J. WAC 392-400-435. Short-term and in-school suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter recommended WAC 392-400-435(4)(b) regarding in-school suspensions be revised to state that school personnel "are accessible to offer reasonable support to keep the student current with assignments and coursework" The commenter questioned what "support" means here. "If providing a quiet place to work and meeting basic nutritional and biological needs, then fine. If it means helping the student understand the calculus class [the student] is working on, then we have a problem."	No action taken. OSPI believes it is not necessary to define "support" for purposes WAC 392-400-435(4)(b).OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
2. Commenter recommended that students in grades K–4 should not be suspended.	No action taken. OSPI agrees with the commenter that students in grades K–4 should not receive long-term suspensions from school. However, the agency believes the final rules' due process protections for of K–4 students are sufficient to adequately protect the interest of students. Accordingly, OSPI declines to adopt the commenter's proposed change.

## 2-K. WAC 392-400-440. Long-term suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter questioned whether the proposed rules	Comment noted.
mean to limit long-term suspensions and expulsions so they	
cannot be used as punishment, except for firearm offenses.	
"Once the firearm is taken from the student, you can no	
longer defend that the student would pose an immediate	
danger to students, but the state says the student must	
stay out for a year. If a district, on the other hand, decides	
that removing a student from the society of the school for a	
period of time should be the punishment, they can't do	
that and can only limit the student's attendance until the	

Comment Summary	Response
disruption or danger is ameliorated. If that's accurate, this	
will need incredible skills on the part of principals to help	
both in and out of school communities understand this	
conceptual shift. We agree that we need to personalize our	
approach to discipline and move away from a set number	
of days for specific situations/incidents."	
2. Commenter questioned how the limitation on	Comment noted.
administering long-term suspensions beyond the school	
year in which the behavioral violation occurred applies to	
summer school.	
3. Commenter expressed concern that the limitation on	No action taken. See response to 1-K-5.
long-term suspensions in WAC 392-400-440(2)(b) seeks to	·
make the same threshold requirements for an emergency	
expulsion applicable to a long-term suspension. The	
commenter believes this language turns the focus from the	
violation to the violator, and it may promote the very	
disproportionality and inconsistency that OSPI and districts	
are striving to minimize. The commenter also suggested the	
presence of some students at school may not create a	
threat of danger or substantial disruption, yet the rules	
violation may be of such a serious nature that it needs to	
be addressed by a long-term suspension (.e.g, a student	
dealing drugs to other students." The commenter suggests	
school districts must be free to impose long-term	
suspensions when the nature and the circumstances of the	
violation warrant significant discipline, not the personal	
circumstances of the violator and his potential safety or	
disruption threat, and recommends OSPI delete this	
subsection.	
4. Commenter suggested limitations on long-term	Comment noted
suspensions and expulsions for students in grades K–4 be	
supported with adequate resources. "We have seen a	
sharp increase in sexual misconduct incidents in our	
elementary schools, usually resulting from sexual and	
physical abuse and exposure to adult content at home.	
Often, the parents of these children either have no interest in procuring outside services for their child or cannot afford	
to do so." The commenter also noted that in some cases,	
the school district needs more than ten days to get	
students assessed by an outside mental health expert to	
determine whether they are safe to return to school. They	
request OSPI provide school districts with more, not fewer,	
tools and resources with which to address this critical need	
in our schools.	
5. Several commenters urged OSPI to strike WAC 392-400-	No action taken. See response to 2-A-10.
440(4) and (5), which prohibits a school district from long-	The decion taken, see response to 2-A-10.
term suspending or expelling students in grades K–4. The	
commenters stated this limitation is contrary to law and	
impractical because the Legislature imposes no grade-level	
limitations on school districts and OSPI's proposed rules	
	1

Comment Summary	Response
also prohibit a school from transferring the student to a	·
more optimum learning environment.	
6. Commenter opposed limitations on suspending	Comment noted.
students in grades K–4. The commenter shared their	
personal experience as a teacher, and experiences of other	
teachers, and being threatened and injured by young	
students. The commenter stated that even young children	
can pose a serious risk to others. The commenter also	
noted the argument that children cannot learn to "do	
school" if they're excluded from it is faulty, sharing	
examples of a student who was not removed who	
destroyed classroom supplies and injured their teacher.	
The commenter stated that teachers are forced to	
evacuate their classrooms multiple times for the safety of	
students and at the expense of learning.	
The commenter noted that if we take away suspensions of	
students who are aggressive when they are young, not only	
are we teaching those students that violence against others	
is acceptable until they are "big enough to actually hurt	
others," but also we are subjecting other students in the	
classroom to recurring trauma. Some children will	
functionally benefit from limited suspension, but all	
children deserve the right to feel safe at school.	Commont nated
7. Commenter expressed concern about the proposed	Comment noted.
prohibition on long-term suspensions for students in	
grades K–4. The commenter shared their personal	
experience as a teacher who has had students who	
physically threatened and hit students and school	
personnel. The commenter observed that if a long-term	
suspension happens, there is just cause regardless of the	
student's age, and schools do not suspend students	
arbitrarily. "It is unfair to the 23 other students in my class	
that their academic progress and emotional wellbeing be	
held hostage by the behavior of one student when that	
student has been provided with a range of interventions	
and continues to assault others." The commenter noted	
that while they want to keep students in the classroom,	
sometimes they need to be removed for their own safety	
and the teacher's safety, and the safety of students who	
are there to learn and aren't biting people.	No ostion tokon Consumos A A A C
8. Commenter urged OSPI to take every opportunity in the	No action taken. See responses to 1-A-16 and 1-
rules to require school districts to use alternatives to	A-19.
suspension and expulsion in every instance. While they	
appreciate that the rules require the use of alternatives to	
suspension for short-term suspension, they believe similar	
language should be included with long-term suspensions	
and expulsions. Schools can do a lot to mitigate the need to	
exclude students, and that should be available even in the	
most serious of circumstances.	

August 13, 2018

Page 126

Comment Summary	Response
9. Commenter stated schools need to be able to long-term	Comment noted.
suspend and expel young students because some students	
physically assault students and staff on a recurring basis.	
The commenter shared their personal experience as a	
principal with a student who physically assaulted other	
students multiple times. The commenter observed that	
while it's their job to educate all students, sometimes the	
system needs time to work with families and community	
organizations and setup a success plan that is good for the	
student and the students they are offending. Sometimes a	
longer suspension is also necessary for finding a new	
placement for the student so they can get a fresh start. The	
commenter noted that HB 1541 gives them these options.	
10. Commenter noted they are seeing many students	Comment noted.
suspended for the broad reason "behavior that impacts	
health or safety of other students." They shared an	
example of a student who was removed under this reason	
for giving cigarettes to a student who was underage. The	
commenter suggested that schools are using "safety" as a	
very broad reason for removing students now. The	
commenter noted this dictates against true restorative	
practices.	

## 2-L. WAC 392-400-445. Expulsions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter recommended the rules reference RCW	No action taken. The final rules reference RCW
28A.600.420 regarding firearm expulsions even though it is	28A.600.420 and the statutory language is fully
referenced in the proposed WAC 392-400-420, noting	included in WAC 392-400-820.
schools and families might be confused about the exception.	
2. Commenter suggested that the limitation on expulsions	Comment noted.
in WAC 392-400-445(2)(b), if it does now allow expulsions	
for continuing threats of substantial disruption, may	
catalyze a movement that pushes schools back to the days	
of "No Tolerance."	
3. Commenter suggested that the reference to RCW	Action taken. OSPI agrees with the
28A.600.015(6) in WAC 392-400-445 is potentially	commenter's proposed language, and the final
confusing because the statute references "discretionary	rules have been amended as suggested.
discipline" and then says "discretionary discipline" does not	
include the subsections. A better wording in WAC 392-400-	
445 might be "under RCW 28A.600.015(6)(a) through	
(6)(d)."	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 127

# 2-M. WAC 392-400-450. Suspensions and expulsions—Initial hearing with student.

Comment Summary	Response
Commenter noted that most school leaders already	Comment noted.
attempt to call families when an incident occurs, and	
requiring a school leader to contact students and families	
both before and after implementing discipline is likely to	
create an unreasonable barrier to school management.	
2. Several commenters recommended WAC 392-400-	No action taken. See response to 1-M-5.
450(1) language requiring schools to conduct an initial	
hearing be clarified to schools offering students the	
opportunity for an initial hearing. The commenter	
explained that some students do not take advantage of this	
opportunity, and administrators cannot force a hearing to	
place anyway. One commenter suggests the opportunity	
language is in line with due process protections in Goss v.	
Lopez. Commenters noted that students often leave school,	
or are arrested, before any hearing could be conducted.	
Students might also refuse to attend the meeting or be so	
agitated or defiant the hearing would be	
counterproductive.	
3. Commenter noted that proposed changes to WAC 392-	Comment noted.
400-450 would have significant implications for school	
districts, especially subsection (2) regarding parent	
participation. The commenter questioned what parent	
participation exactly looked like and commented this could	
extend a school disruption in unanticipated ways.	
4. Several commenters recommended OSPI revise WAC	No action taken. The final rules are consistent
392-400-450 to ensure that administrators notify parents	with RCW 28A.600.020(3), which requires
before conducting an initial meeting with a student facing	school districts to adopt discipline procedures
both short-term and long-term suspension and allow	providing that teachers and school
parents to be present for the meeting. Commenter noted	administrators "make every reasonable attempt
this is particularly important for young students, who will	to involve the parent or guardian and the
have difficulty advocating for themselves.	student in the resolution of student discipline
	problems." OSPI believes the commenters'
	proposal is not necessary because the final rules
	adequately provide for early parent
	involvement.
	OSPI amended WAC 392-400-450 to provide
	increased opportunities for parent participation
	during an initial hearing with the student.
	Following the initial hearing, WAC 392-400-455
	requires school districts to provide written
	notice explaining the student and parent's
	rights to appeal the suspension or expulsion.
	OSPI believes these due process procedures
	adequately provide due process protections to
	students to ensure they have notice of the
	allegations made against them and an
	opportunity to respond.

Comment Summary	Response
	OSPI believes that imposing even more
	prescriptive obligations on how districts should
	notify parents before an initial hearing would
	be unduly burdensome to educators and may
	make it more difficult for teachers to ensure
	student success. Notably, nothing in the final
	rules precludes a school district from adopting
	policies and procedures setting forth
	expectations that provide additional procedural
	protections for students.
5. Commenter noted that the proposed WAC 392-400-	Comment noted. OSPI disagrees with the
450(2), requiring administrators to make a reasonable	commenter's contention that it may be in a
attempt to contact the student's parent so they may	child's best interest to exclude their parents
participate in the initial hearing, could make it very	from an initial hearing.
challenging for administrators to make decisions that are in	nom an initial nearing.
the best interest of all, especially knowing many parents	
will be strong advocates for their child and unable to	
participate objectively. The commenter also noted that parents may not understand their participation is not a	
guarantee that the hearing will go the way they want it to.  6. Commenter noted that the proposed rules represent a	No action taken. OSPI believes the commenter's
significant improvement upon the current rules in terms of	
	proposed changes are not necessary because
ensuring parents are able to participate, especially	WAC 392-400-110(3) requires school districts to
regarding the possibility for parents to be notified before	annually provide the district's discipline policies
an initial hearing with the principal and student. However,	to parents in a language they can understand—
the commenter noted that this effectively means that	including policies setting forth parents' right to
elementary school students will be suspended without any	be involved in an initial hearing for short-term
parental involvement being initiated by the school because	suspensions. In addition, WAC 392-400-
elementary students in grades K–4 cannot be long-term	430(1)(b) provides that districts must make
suspended or expelled and the proposed provision for	every reasonable attempt to involve parents in the resolution of behavioral violations.
short-term suspensions only allows the student to contact	the resolution of behavioral violations.
their parents. Parents are most concerned about being able	
to advocate for the youngest children, and power	
imbalances between a principal and a kindergartener are	
significant. The commenter encouraged OSPI to expand the	
notice provision at the very least to ensure that parents of	
elementary school student are receiving an affirmative	
notice from the principal or other school administrator	
about their ability to participate in that initial hearing prior	
to the suspension or expulsion.	No action taken. Con response to 1.84.4
7. Commenter noted that students are not getting social	No action taken. See response to 1-M-4.
and emotional support when they are being removed, and	
many students lack these skills. The commenter	
recommended that all children should have a parent	
involved before disciplinary action occurs because many	
students cannot advocate for themselves, and schools	
don't know what caused the behavior.	No obtantalism C
8. Commenter recommended that parents should be	No action taken. See response to 1-M-4.
given the opportunity to meet with administrators before	
their student is suspended, especially when the child has	

August 13, 2018

Page 129

Comment Summary	Response
learning disabilities. Suspensions are serious and parents	
should be included as part of the team. The commenter	
shared the personal experience of their student, who has	
disabilities, who was suspended for half a day and locked	
out of school before they were called. The commenter	
added that the school is several miles from home, and	
arranging transportation is a hardship for their family.	
9. Commenter suggested OSPI revise the rules to ensure	No action taken. See response to 1-M-4.
administrators notify parents before conducting an initial	
meeting with a student. Many students have difficulty	
advocating for themselves.	
10. Commenter expressed concern about the proposed	No action taken. See response to 1-M-5.
requirement that a principal or designee must provide	
students the opportunity to contact the student's parents	
during an initial hearing. The commenter observed that	
out-of-school suspensions do not occur often in their	
school, but when they do, it's usually because of violence.	
A lot of pieces go into an investigation, and they try to get	
all sides of the story and make sure they are making a well	
thought-out decision. The commenter recommended that	
administrators should be able to make a decision about	
discipline without the parents' influence, as parents already	
have notice and appeal rights. The commenter noted it will	
add some pressure of bias in the decision making, and it	
will be unfair for students whose parents aren't involved.	

# 2-N. WAC 392-400-455. Suspensions and expulsions—Notice to student and parents.

Comment Summary	Response
1. Commenter recommended schools be allowed to	No action taken. See response to 1-N-2.
provide notice by email or message through a app, noting	
that sending certified letters home is not always a good	
way to reach their families. The commenter also	
questioned whether the notice can be provided by	
voicemail.	
2. Commenter requested OSPI prohibit school	No action taken. See response to 1-N-2.
administrators from leaving voicemails on parents' phones	
as notification of suspension. There needs to be a more	
collaborative approach.	
3. Commenter noted that the student and parent notice	Comment noted.
requirements appear to be unduly burdensome for school	
principals, unnecessary, and likely to create conflict in cases	
where parents or guardians focus on other alternatives that	
were determined by school professionals to be	
inappropriate. In requiring the notice to include other	
forms of discipline the school district considered or	
attempted, the proposed rule asks for the principal to	
document their stream of consciousness.	

August 13, 2018

Page 130

Comment Summary	Response
4. Commenter expressed support for the provisions that	No action taken. See response to 1-N-6.
require parental input in the development of educational	
services. However, the commenter noted that the notice	
provided to parents upon suspension and expulsion, which	
notifies parents of the opportunity for educational services,	
does not give parents any information about how to	
become involved with the process of developing those	
educational services. The commenter recommended that	
initial notice include a name and contact information, or	
some other information about the process, to help	
facilitate parent involvement.	

## 2-O. WAC 392-400-460. Suspensions and expulsions—Optional conference with principal.

Comment Summary	Response
1. Commenter agreed that parent communication is	Comment noted.
valuable and is helpful in limiting disputes regarding	
discipline. However, the commenter noted that the	
optional conference with the principal procedures, which	
are separate from appeal and reengagement procedures,	
are more likely to be confusing than helpful.	

### 2-P. WAC 392-400-465. Suspensions and expulsions—Appeal.

Comment Summary	Response
1. Commenters noted that the one school business day	No action taken. See response to 1-P-12.
timeline for scheduling an appeal hearing in WAC 392-400-	
465(4)(a) is a very quick turnaround, given that a school	OSPI believes it is important to ensure that
district would have to coordinate school, family, and	students and parents can quickly appeal a
hearing officer schedules. One commenter suggested 3–5	suspension or expulsion once it has
days would be reasonable.	commenced. OSPI encourages school districts
	to tentatively plan the scheduling of appeal
	hearings at the time written notice of the
	discipline is provided.
2. Commenter noted that due process timelines for	No action taken. See response to 1-P-12.
appeals of long-term suspensions and expulsions are	
impractical, especially considering the need to arrange for	
and provide language access services. The commenter	
requested reasonable extensions to the time frames and	
additional state resources for language access services so	
fair and equitable hearings may take place.	
3. Several commenters expressed concern that the	No action taken. See response to 1-P1.
proposed rules provide elaborate adversarial due process	
rights to students even when they are provided with a basic	
education program during their suspension or expulsion.	
The commenters suggest that elaborate due process	
appeal rights should be required only when students have	
been deprived of more than a de minimis right. The	

August 13, 2018

Page 131

Comment Summary	Response
commenters also share that adversarial hearings are not	
effective tools for teaching students how to resolve	
conflict, and they often serve to enable bad behavior.	
The commenters recommend that if a district provides a	
long-term suspended or expelled student with a program	
of basic education in an alternative setting, the district	
should have a safe harbor from adversarial hearings with	
lawyers. The commenters also recommended that if a	
student is receiving educational services in an alternative	
setting via a course of student enumerated in WAC 392-	
121-107, the student may not appeal the suspension or	
expulsion, but they may request an appeal under WAC 392-	
400-465(3) (appeals for short-term and in-school	
suspensions). Moreover, the commenters recommend that	
appeals for short-term and in-school suspensions under	
WAC 392-400-465(3) do not include a right of review and	
reconsideration under WAC 392-400-470.	
4. Commenter expressed concern that school districts	Comment noted. See response to 1-P-15.
would have to provide a list of witness names to parents of	
a perpetrator, especially when parents are experiencing	
higher levels of anxiety about safety.	
5. Commenter expressed concerns about the adversarial	Comment noted.
nature of the due process procedures. The commenter	
noted that the adversarial approach gets in the way of	
confidentiality and restorative practices because it	
becomes more about proving a point or winning a	
discussion.	

### 2-Q. WAC 392-400-470. Suspensions and expulsions—Review and reconsideration.

Comment Summary	Response
1. Commenter expressed concern that the proposed rules	No action taken. See response to 1-Q-1.
take away a parent's right to be heard in front of their	
school board. The commenter noted that this is how school	
boards hear from parents about the use of school district,	
and it's the only opportunity for constituents to be formally	
heard by their elected officials. The commenter stated	
school boards may become a rubber stamp of the previous	
discipline decisions. The commenter recommended parents	
have the right to go before the school board.	

## 2-R. WAC 392-400-475. Discipline appeal council.

Comment Summary	Response
No comments.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 132

## 2-S. WAC 392-400-480. Petition to extend expulsion.

Comment Summary	Response
No comments.	

## 2-T. WAC 392-400-510. Emergency expulsions—Conditions and limitations.

Comment Summary	Response
1. Commenter expressed support for the proposed removal of "threat of disruption" as a justification for an emergency expulsion, noting they have seen it overused as a ten-day exclusions. The commenter observed they too often see emergency expulsions given for non-emergencies and threats that are not continuing. They also see emergency expulsions set at ten days across the board, and they don't see principals using that time to actively determine if a danger exists or allow the student to return as soon as they find no threat.	Action taken. See response to 1-E-7.
The commenter also observed that many of the examples administrators shared regarding "threat of disruption" would be addressed as a "threat of danger." The commenter requested language to make clear that emergency expulsions are not only for continuing danger at the time of the beginning of the removal, but that the determination be made on a regular basis within that ten days, noting administrators cannot making a determination of continuing threat on day one.	
2. Several commenters urged OSPI to allow a school district to emergency expel a student because of a material and substantial disruption of the educational process. Commenters provided the following reasons:	Action taken. See response to 1-E-7.
Commenters provided examples of situations in which they believed a student may not be a danger to others but would substantially disrupt the school day and would warrant an emergency expulsion, including drug violations involving use or distribution, sexual misconduct, discrimination, and bullying.	
Commenters noted that by omitting the "immediate and continuing threat of material and substantial disruption of the educational process" justification for an emergency expulsion, OSPI will severely limit the district's ability to protect its students.	
Commenters stated that school districts need to be able to emergency expel a student who is not clearly a danger to other students, but may be. They provided an example of a student with a history of aggressive behavior posting a	

Comment Summary	Response
picture of himself with a loaded AR-15 on Snapchat,	·
knowing that the post will be seen by students. One	
commenter shared an example of a student making vague	
threats online that the school district needs to investigate.	
"The district may then be subject to negligence claims for	
having knowledge of the posts and NOT emergency	
expelling that student to protect the safety of the other	
students."	
One commenter noted that "danger" is very narrow in	
scope, and a lot of chaos and emergencies happen in a	
variety of ways. The commenter shared an example from	
their school district of needing to emergency expel two	
students who were discovered engaging in "lewd and	
inappropriate" conduct in an empty classroom.	
One commenter noted that being able to emergency expel	
a student for serious misconduct helps ensure disciplinary	
decisions are based on investigatory findings, rather than	
on allegations or preliminary findings. The commenter	
suggested the proposed revision will likely require school	
districts to place increased emphasis on promptly imposing	
long-term suspensions in response to allegations of serious	
misconduct that does not necessarily present evidence of	
immediate danger.	
Coveral commenters also observed that amarganay	
Several commenters also observed that emergency expulsions for disruption are often used by local educators	
as a de-escalation technique, designed to create separation	
for student offenders, victims, parents, and staff. Others	
stated that emergency expulsions provide opportunity to	
arrange for psychological or other risk evaluations and	
developing support or safety plans.	
developing support of surety plans.	
Commenters noted that teaching and learning cannot take	
place in an environment with nonstop behavioral	
disruption. "We urge OSPI to view all the proposed rules	
again given the tipping point where students who abide by	
conduct rules are in effect punished for doing so, or are	
afraid to come to school because they see no consequence	
being imposed on their peers for aggressive behaviors."	
Commenters also suggested that emergency expulsions for	
disruption were also expressly approved by the United	
States Supreme Court in Goss v. Lopez, and are in line with	
the Legislature's and OSPI's emphasis on ensuring student	
safety and providing an educational environment that is	
conducive to learning.	
3. Commenter expressed confusion at OSPI's proposal of	Action taken. See response to 1-E-7.
removing the "material and substantial disruption"	

Comment Summary	Response
language from emergency expulsions. The commenter	·
suggested the motivation for this proposed change may lie	
in the concern that school districts do not set a sufficiently	
high bar for what is a "material and substantial disruption."	
The commenter suggests there are other ways to address	
this concern, such as defining when a "material and	
substantial disruption" occurs. Removing this as a basis for	
an emergency expulsion unnecessarily restricts a district	
from taking steps necessary to protect and maintain the	
learning environment for other students. The commenter	
recommended leaving the current law related to	
emergency expulsions intact.	
4. Commenters requested school districts to emergency	Action taken. See responses to 2-A-48 and 2-A-
expel a student when they pose a danger to their self,	49.
explaining that the student may need to be removed to	
investigate what is going on and figure out how best to	
support the student, but putting the student on a	
suspension may be the exact wrong trigger.	
5. Commenters noted that the removal of the "material	Action taken. See response to 1-E-7.
and substantial disruption" language from emergency	, , , , , , , , , , , , , , , , , , ,
expulsions directly conflicts with similar language in WAC	
392-400-110(1)(b), 392-400-330(2), and 392-400-440(2)(b),	
and questioned why it would be appropriate in these	
circumstances but not for an emergency expulsion.	
6. Commenter raised concerns about proposed limitations	Comment noted. See response to 1-E-7.
on emergency expulsions. The commenter noted that being	
able to emergency expel a student who is making	
innocuous threats online, gives them time to determine if	
there is an actual threat, and it calms the community who	
may have seen the threats. The commenter also observed	
their school is seeing instances of students with mental	
health issues, sharing an example of a student who told	
other students about having visions that were violent. The	
ability to emergency expel this student protects them time	
to put a plan in place to help the student if the parents	
won't.	
7. Commenter expressed concern about removing the use	No action taken. See response to 1-J-5.
of emergency expulsions for students in grades K-4. The	
commenter noted this is a tool they use very seldom, but it	The final rules do not include grade-level
is needed. "I believe there's a perception that students in	limitations for emergency expulsions.
grades kindergarten through fourth grade are incapable of	
posing a true threat and creating fear in a school, but that	
is simply untrue. Young students are very capable of	
making threats, producing weapons, doing all sorts of	
behaviors that disrupt the school environment and disrupt	
our communities." The commenter also observed that,	
especially in today's climate of heightened fear for threats	
in schools, the emergency expulsion for grades K-4 is a	
tool principals can use to get mental health and threat	
assessments. The commenter noted that without being	

August 13, 2018

Page 135

Comment Summary	Response
able to emergency expel a student, there is nothing a	
school can do to force a parent to take their child in to be	
assessed, make sure they are safe in school, and possibly	
change the course of that student's life.	
8. Commenter observed that, in their experience, 99.9%	Comment noted.
of students who have been out of school have been out	
because of an emergency expulsion, and a vast majority	
students they represent spend the whole ten days out of	
school. The commenter noted a study said that four days	
out of a school puts a student at great risk of not	
graduating. The commenter also noted that students rarely	
get compensatory education, even if it is requested.	
9. Commenter requested OSPI make model discipline	Comment noted. OSPI intends to provide
forms available for districts, noting that most parents who	technical assistance and guidance to assist
receive emergency expulsion notices don't understand the	school districts, parents, and advocates in
notice, and they are not provided information about their	implementing the rules.
rights, readmission, or who they can contact. The lack of	
communication is big.	
10. Commenter recommended the rules include more	No action taken. See response to 1-K-5.
specific criteria for "danger." The commenter noted the	
words schools use to justify removals do not match the	
student's behavior.	

### 2-U. WAC 392-400-515. Emergency expulsions—Notice to student and parents.

Comment Summary	Response
No comments.	

### 2-V. WAC 392-400-520. Emergency expulsions—Optional conference with principal.

Comment Summary	Response
No comments.	

### 2-W. WAC 392-400-525. Emergency expulsions—Appeal.

Comment Summary	Response
No comments.	

### 2-X. WAC 392-400-530. Emergency expulsions—Review and reconsideration.

Comment Summary	Response
No comments.	

# 2-Y. WAC 392-400-610. Educational services during suspension, expulsion, or emergency expulsion.

Comment Summary	Response
Commenter noted that the teacher is a critical	No action taken. See response to 1-Y-1.
component related to student understanding content, but	·
they questioned how schools can provide that access if a	
student demonstrated behavior in a way that would inhibit	
a teacher from providing such access. The commenter	
questioned if access to school personnel could be via email,	
phone, or an internet platform, noting concern for how it	
could work if a student threatened the only teacher who	
can provide access to a particular subject.	
Commenter questioned how school districts will access	Comment noted. See response to 1-Y-31.
funds to staff the requirements in proposed WAC 392-400-	
610.	
Commenter observed that transportation seems to be	Comment noted.
an overextended expectation in educational services,	Comment noted.
nothing that transportation is a privilege, not a right.	
4. Commenter noted that the given the requirements in	Comment noted.
proposed WAC 392-400-610, school leaders will be	Comment noted.
required to find a balance between providing educational	
services, working within Collective Bargaining Agreement	
guidelines, both with limited budget and resources.	No action taken. OSPI believes the final rules
5. Commenter recommended OSPI be explicit about "out-	
of-school placement" verses "out of school." The	and underlying statutes are clear. Requirements
commenter noted some school districts interpret the Gun-	regarding the provision of educational services
Free Schools Act to not allow the district to provide	during suspension or expulsion apply regardless
educational services to students who are expelled for gun-	of whether an expulsion was mandatory under
related violations. The commenter noted the Gun-Free	RCW 28A.600.420 or not.
Schools Act does not prohibit school districts from	
providing educational services, and state statute requires	
educational services in all cases, including cases of guns in	
schools. The commenter stated that, without being explicit	
in the rules, it is hard for families and students to know	
what they can ask for.	
"Comparable, equitable, and appropriate"	Comment and Comment to 1 V 22 and
6. Commenter noted this requirement does not appear to	Comment noted. See responses to 1-Y-23 and
contemplate serious discipline offenses such as bringing a	2-Y-5.
firearm to school, which will lead to the mandatory	
expulsion of a student. Providing educational services that	
must be comparable, equitable, and appropriate to the	
regular educational services that the student would have	
received without the suspension or expulsion will create	
unsafe situations for students and staff.	
7. Several commenters noted that the proposed	Action taken. See response to 1-Y-23.
requirement in WAC 392-400-610(1), that "educational	
services must be comparable, equitable, and appropriate"	
to the student's regular educational services, is contrary to	
HB 1541 and OSPI's Bulletins No. 024-16 and 050-16. The	
commenters explain that the Legislature in HB 1541 said	
alternative settings for providing educational services	
should be comparable, equitable and appropriate, and	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018

Response
Action taken. See response to 1-Y-23.
·
No action taken. See response to 1-Y-23.
· '
Action taken. OSPI agrees with the
commenter's proposed language in part, and
the final rules have been amended to read
"school personnel must make a reasonable
attempt to contact the student or parents
within three school business days"
Comment noted. See response to 1-Y-31.
No action taken. See response to 1-Y-20.
·

Page 138

Comment Summary	Response
more specific to ensure a qualified education is providing	
educational services.	

## 2-Z. WAC 392-400-710. Student reengagement after long-term suspension or expulsion.

Comment Summary	Response
1. Commenter noted that the proposed definition of	No action taken. See responses to 1-A-48 and 1-
"cultural responsiveness" for reengagement plans is	A-84.
impractical from a training standpoint and presents a	
significant amount of legal liability for schools. The	
commenter stated that while they appreciate the	
description of the term and OSPI's intent, the language sets	
a new legal standard to which all reengagement plans will	
be held. They question whether it is feasible to expect	
school districts to provide training in this broad content	
area without additional time and state resources.	
The commenter also expressed concern about how school	
districts should prioritize a student and their family's	
cultural values against the district's student conduct	
standards and state and federal law: "If a student is alleged	
to have engaged in discrimination of another student based	
on their sexual orientation, and that student and their	
family belonged to a culture in which such behavior is	
acceptable, how would the district go about 'collaborating	
with the student and parents to develop a culturally	
sensitive and culturally responsive reengagement plan	
tailored to the student's individual circumstances ?'"	
The commenter recommended OSPI add language to WAC	
392-400-710(2)(b) to state "As appropriate, students'	
cultural histories and contexts and family cultural norms	
and values when not in conflict with district policies or	
state or federal law, community resources, and community	
and parent outreach."	
2. Commenter observed that the reengagement section	Comment noted.
seems to focus around the student and the student's	
family, and they questioned what the school building's role	
is in reengagement. The system itself should be addressed,	
including what's happening within the school framework	
and with school personnel to improve the conditions so the	
student is able to meet behavioral expectations.	

## 1-AA. WAC 392-400-805. Fundamental rights.

Comment Summary	Response
1. Commenter recommended a section regarding the	No action taken. See response to 1-AA-1.
prohibition on strip searching students be added to the	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018

Page 139

Comment Summary	Response
rules along with the firearms and corporal punishment	
sections.	

# 2-BB. WAC 392-400-810. Long-term suspensions and expulsions administered by another school district.

Comment Summary	Posnonso
Several commenters expressed concerns with the	Response Action taken. See response to 1-BB-2.
proposed rule allowing schools to continue to administer	Action taken. See response to 1-bb-2.
long-term suspensions and expulsions administered by	
another school district. The commenters noted this	
language may be used to effectively deny any educational	
services to students who move school districts during a	
period of suspension and expulsion because the rules do	
not require the new district to enroll the student before	
moving to continue the exclusion.	
moving to continue the exclusion	
The commenters also observed students who move	
districts are disproportionately likely to be students of	
color, low income students, foster students, migrant	
students, and homeless students. "This will exacerbate	
achievement gaps and undermine the educational success	
of our most vulnerable students."	
One commenter shared a personal experience of a parent	
they know who's student was long-term suspended and	
was not provided many options for continuing their	
education. The commenter suggested this proposed rule	
would make things even more difficult for families who are	
already struggling.	
One commenter observed that the only option for students	
who have been suspended in their district is online school,	
and that is inequitable for families who cannot provide	
child care during the day, and it does not work for families	
or students with special needs.	
The commenters recommended OSPI return to the	
language it initially proposed, requiring districts to find an	
immediate and continuing danger to other students or	
school personnel before continuing a suspension or	
expulsion imposed by another district. The commenters	
also recommended OSPI should, at a minimum, require	
school districts to enroll the student and provide	
educational services and a reengagement meeting, find an	
immediate and continuing threat of disruption or danger to	
others before continuing a suspension or expulsion from	
another district and provide due process to students.	
2. Several commenters noted that it does not make sense	Action taken. See response to 1-BB-2.
to require a new school district to provide full due process	

Comment Summary	Response
rights to a newly enrolled student in order to continue a	
suspension from a previous district. The new district would	
need to hold a hearing with no witnesses and no school	
personnel to talk about the incident. Commenters	
observed this is overly burdensome and seems	
unnecessary.	
,	
One commenter questioned why a student would get	
additional due process just because he moved during his	
long-term suspension.	
One commenter noted there could be situations in which	
immediate safety concerns exist and where the discipline is	
appropriate to continue, but due to lack of documentation	
or representation from the other district, the student	
would be enrolled in a comprehensive school.	
would be enfolied in a completicitive school.	
Another commenter suggested that a student would have	
presumably already lost an appeal or did not exercise their	
right to appeal. If the student already lost an appeal, the	
new school district's hearing officer would have to	
_	
substitute their judgement for the previous hearing office	
with no facts or witnesses. If the student did not exercise	
their right to appeal, they would get a "second bite at the	
appeal apple."	
3. Commenter noted that the initial proposed rule	Action taken. See response to 1-BB-2.
included a process where a school district could not	
continue the suspension or expulsion of a student from a	
previous school district unless the school district	
determined the student presented a current safety risk to	
attend school. The commenter observed that this has been	
a point of dispute between school districts and families on	
what the obligation is for the receiving district, but the	
initial proposed rule seemed to be a good compromise. The	
commenter expressed concern about the proposed	
revision in the supplemental filing, suggesting that OSPI	
took the side of school districts by allowing a district to	
enforce discipline administered in a previous district. The	
commenter also expressed concern that due process	
protections for parents is not clear and unlikely to be	
effective.	
4. Commenter noted that OSPI should not allow a student	Action taken. See response to 1-BB-2.
suspended in one district to continue to be suspended in	
another school district. Kids need a clean slate.	
5. Commenter suggested that suspensions should not	Action taken. See response to 1-BB-2.
carry from one district to another.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 141

### 2-CC. WAC 392-400-815. Behavior agreements.

Comment Summary	Response
1. Commenter expressed support for including regulations	No action taken. See response to 1-CC-2.
regarding behavior agreements. However, the commenter	
requested OSPI reiterate in proposed WAC 392-400-815	
that behavior agreements cannot waive a student's right to	
participate in the reengagement process. The commenter	
also recommended the section reiterate that a behavior	
agreement is not a substitute for a reengagement plan,	
which should include commitments from the school,	
consistent with HB 1541.	

### 2-DD. WAC 392-400-820. Firearm exceptions.

Comment Summary	Response
No comments	

### 2-EE. WAC 392-400-825. Corporal punishment, restraint, and isolation.

Comment Summary	Response
No comments	

Comments regarding the supplemental proposed rules, filed June 6, 2018 (WSR 18-12-122)

#### 3-A. General Comments

Comment Summary	Response
1. Commenter observed the new definitions,	Comment noted.
explanations, deletions and additions to the Proposed	
Rules for Chapter 392-400 WAC more clearly explain how	
student discipline works in our educational system here in	
Washington State. "I also feel you are inclusive in	
protecting all students; victims and offenders of rules and	
policies, when you state that one purpose of the chapter is	
to 'Provide a safe and supportive learning environment for	
all students.'"	
The commenter noted it is vital to clearly state that there	
are clear and specific rules that detail the process that must	
be followed, and expected discipline applied to students	
who pose 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, or whose behavior adversely	
impacts the health or safety of other students or	
educational staff. "I do hope every teacher and	
administrator has that brought specifically to their	
attention so they know their rights and their	

Comment Summary	Response
responsibilities, and that there are laws/rules to back them	,
up when they need it."	
2. Commenter noted that one of the most significant	Comment noted. See response to 1-A-53.
aspects of HB 1541 was a significant focus on trying to	'
address racial disproportionality in school discipline.	
Students of color and students with disabilities are removed	
from school at significantly higher rates under the current	
discipline policies. The commenter expressed concern that	
the current proposed rules do not go far enough to address	
this. The commenter urged OSPI to do more in the rules to	
work to overcome institutional and structural racism, as well	
as internalized racial superiority that school staff and	
students live with. The commenter noted that white people	
hold a racial superiority bias and it takes a lot of work to	
combat that both individually and systemically.	
3. Commenter stated that current discipline policies do	Comment noted. See response to 1-A-53.
not well serve students of color, low income students, and	·
foreign or Latino parents.	
4. Commenter recommended that the state needs to	Comment noted. See responses to 1-A-48 and
implement policies that are more inviting and informative to	1-A-53.
low income families, newcomer families, and undocumented	
families. The commenter noted that many of these families	
do not know their rights of what a school is supposed to	
offer in terms of services or resources. The commenter also	
stated that schools need to properly communicate with	
parents when their student is involved in a discipline event,	
as an offender or as a victim. It is important to have	
interpreters and not rely on older siblings to communicate.	
Administrators need proper cultural competence and	
awareness training.	
5. Commenter raised concern that many Latino families do	Comment noted. See response to 1-A-83.
not have enough information about what is fair and equal	
treatment in student discipline. The commenter shared an	
example of a Latino student who was suspended when other	
non-Latino students who engaged in the same behavior	
were not. The commenter recommended that policies need	
to inform fair actions for all parties involved in behavior	
incidents.	
6. Commenters noted that we need to protect all our	Comment noted. See response to 1-A-2.
students by providing a safe and supportive learning	
environment for all students.	Community start
7. Commenters noted that we need to protect all our	Comment noted.
students by enabling school staff to apply appropriate	
discipline so there are consequences for violating behaviors.	Command motor Command to 2 A 40
8. Commenters noted that we need to protect all our	Comment noted. See response to 2-A-10.
students by restricting students from remaining in school	
when they pose a threat or danger to others.	Command motod Command A 5 7
9. Commenters noted that we need to protect all our	Comment noted. See response to 1-E-7.
students by removing students from classes and school	
when they pose an immediate or continuing threat of	

Comment Summary	Response
material and substantial disruption of the educational	
process.	
10. Commenters noted that we need to protect all our	Comment noted. See response to 1-E-7.
students by immediately removing a student from their	
current placement when necessary—when the student's	
behavior results in an extreme disruption of the education	
process that creates a substantial barrier to the learning of	
others.	
11. Commenters noted that we need to protect all our	Comment noted.
students by applying discipline for behavior that adversely	
impacts the health or safety of others.	
12. Commenters noted that we need to protect all our	Action taken. The final rules include a
students by protecting victims by precluding a student from	provision on protecting the rights of victims,
returning to the regular educational setting following the	WAC 392- 400-810, which clarifies that, in
end date of a suspension or expulsion for the purpose of	accordance with RCW 28A.600.460, a school
protecting victims.	district may preclude a student from returning
	to the student's regular educational setting
	following the end date of a suspension or
	expulsion for the purpose of protecting victims of certain offenses.
	or certain offenses.
	However, this provision does not authorize a
	However, this provision does not authorize a school district to exclude a student from the
	student's current school placement.
13. Commenters noted that we need to protect all our	Comment noted. See responses to 1-I-16, 1-
students by protecting teacher and staff victims by	I-19, and 3-A-12.
reassigning the offending student to another school for the	1-19, and 3-A-12.
duration of the student's attendance or wherever the	
teacher is assigned.	
14. Commenter noted that when all other reasonable,	Comment noted.
rational attempts and best practices have been tried and	
exhausted, student removal is necessary.	
15. Commenter noted that dangerous and irrational	Comment noted.
behavior needs immediate attention.	
16. Commenter noted that the current rights of offenders	Comment noted. The minimum procedural and
far exceed rights for victims.	substantive due process rights contained in the
	final rules are intended to protect the interest
	of all students when they may be subject to
	discipline in Washington school districts during
	their K–12 educational experience.
17. Commenter raised concerns about the limitations that	Comment noted. See response to 2-A-13.
schools and parents face when dealing with discipline issues.	
The commenter recommended OSPI continue to refine the	
rules to prevent as much pain and suffering for innocent	
students as possible. The commenter noted there must be	
consequences for violations of rules or interrupting the	
learning environment and options for keeping offenders out	
of the setting in which they caused disruptions.	
18. Commenter observed that their school district's public	Comment noted.
comment on the discipline rules included an argument for	

Comment Summary	Response
allowing a school district to administratively transfer a	•
student because of "gang influences." The commenter noted	
that this is a loaded and racist term, and the fact that the	
school district superintendent used it so openly should cause	
alarm. It shows the need for more cultural responsiveness.	
19. Commenter shared their experience as a parent of a	Comment noted. See responses to 1-A-2, 2-A-3,
students who have been repeatedly bullied in school. The	and 2-A-10.
commenter noted that the principal and superintendent	and 2-A-10.
were unable to remove the students who were causing	
harm, and they now homeschool their students. The	
commenter recommended schools should be able to take	
action to remove these students so the good kids can get an	
education.	
20. Commenter raised concerns about how their school	No action taken. See response to 1-A-53, 1,-A-
district disciplines students, including concerns about the	83, and 1-A-95.
use of school resource officers and the disproportionate	
use of exclusionary discipline against students of color,	
students with disabilities, and students with Free and	
Reduced Lunch-status.	
The commenter recommended the rules go further to limit	
exclusionary discipline, stating that it is a form of corporal	
punishment because students who are excluded fall behind	
and are often punished with summer school. The	
commenter observed that kids have less representation	
than a person in the criminal justice system. "If schools	
want families to be involved than they need to stop	
excluding parents from the process and discussion of	
discipline in the schools for our own children."	
21. Several commenters stated the following: "As	Comment noted. OSPI believes school district
educators, we see the value of what quality educators do	administrators and educators have substantial
every day and we want all children to experience success in	discretion under the final rules.
our K–12 systems. However, the above proposed rules limit	
our options. Rather than providing us with flexibility to deal	
with students on an individualized basis, the proposed rules	
rigidly dictate nearly every step that we must take in	
handling student behavior. We ask OSPI to trust us, let us	
use our professional judgment, and have some faith in us.	
We want what is best for our students, so let us do what is	
best for them."	
22. Commenter noted that the proposed rules improve the	No action taken. See response to 1-A-65.
systemic and racially fueled disproportionate discipline rates	
that result in the educational opportunity gap. With urgency	
and a lens on racial equity, OSPI should consider all	
comments and recommendations received and finalize the	
substantial changes to the Student Discipline Rules.	
23. Commenter questioned whether OSPI gave	Comment noted.
considerable thought to the rights of victims. The	
commenter expressed concern that by encouraging schools	
to not suspend students, the proposed rules neglect the	

August 13, 2018

Page 145

Comment Summary	Response
rights and needs of students or staff who have not broken	
any school district rules, but who may feel their right to an	
education or to learn or work in a safe setting is being	
violated.	
24. Commenter observed that the proposed rules will add	Comment noted. See response to 1-Y-31.
many new requirements for school districts in terms of	·
providing resources for students and staff, but funding is not	
included to assist schools in meeting the new requirements.	
With the passage of HB 2242, many districts will suffer a	
significant loss of local levy revenue. Many school districts	
have used levy dollars to help struggling students and to	
provide opportunities and support for students who have	
had significant discipline issues.	
25. Commenter recommended OSPI provide a list of best	No action taken. See response to 1-I-2.
practices for limiting the use of suspension and expulsion.	·
26. Commenter recommended OSPI ensure that the	Comment noted. See response to 2-A-3.
proposed rules do not conflict with comprehensive threat	· ·
assessment processes. The commenter observed the	OSPI reviewed threat assessment materials,
importance of threat assessments, and noted that some	including those recommended by the
districts may shorten proper assessments and due diligence	commenter, and believes the final rules are
to return a student to school. In serious cases, a school	consistent with existing threat assessment
district may need more time before returning a student to	processes.
school.	•
27. Commenter stated that our children should be safe in	Comment noted. See response to 2-A-3.
our schools, as well as all staff. "To ignore these problems	
in our school, is that how we want our kids to respond to	
problems? Ignore it, and it goes away? We need to show	
our children it's not ok to be disrespectful, to their parents,	
staff or peers!" The commenter noted risk assessments can	
be done if a child is a threat to others.	
28. Commenter observed that decreasing suspensions is an	Comment noted.
evidence-based practice to help improve school safety.	
Students with Disabilities	
29. Commenter shared their personal experience as a	Comment noted.
parent of a student with disabilities who was suspended	
multiple times. In addition to the suspensions, the student	
was regularly bullied, kept in a "safety room," and	
transferred to a different school. The commenter observed	
that their student no longer trusts the school environment,	
teachers, and other students. They do not want other	
students in special education to suffer because of discipline	
problems as their student did.	
30. Commenter shared their personal experience as a	Comment noted.
parent of a student with disabilities who has been	
suspended multiple times. The commenter noted that the	
discipline and suspension incidents were handled	
inappropriately and not in accordance to their IEP's Behavior	
Intervention Plan. The commenter also noted that when the	
school suspended the student, the student was left to walk	
alone several miles home even though the student's IEP	

Comment Summary	Response
states the student is not allowed to be outside of the school	Response
without an adult. The commenter stated these situations	
were inappropriate uses of discipline and suspensions.	
31. Commenter noted that students with disabilities	No action taken. See responses to 1-A-6 and 1-
experience disproportionate discipline in Washington. While	A-95.
	A-95.
IDEA facially provides strong legal protection for students	
with disabilities, the implementation of the protections	
mandated by IDEA is weak: students with disabilities in this	
state are disproportionately subjected to discipline at a ratio	
of 2.45 of their non-disabled peers, a rate which mirrors the	
disproportionality ratio experienced by black students	
compared to white students. The commenter recommended	
the rules be implemented without delay to prevent denial of	
due process as well as provide for a Free Appropriate Public	
Education to students with disabilities.	
32. Commenter shared the personal experience of a	Comment noted.
student who was emergency expelled for playing a "shooter"	
video game during lunch at school. The commenter observed	
that the student's family believed the school emergency	
expelled the student because they believed the student was	
more likely to be violent because of their autism even	
though the student has never been violent. The commenter	
noted the student missed several days or school.	
Implementation of Rules	
33. Several commenters urged OSPI to not delay the	No action taken. See response to 1-A-65.
effective date of the rules. The commenters noted that	
students will continue to be funneled through discipline	
systems that are predominately oriented towards control	
and punishment, and more harshly impact students of color	
and students with disabilities. The commenter observed that	
a delay in the effective date of many decisions will have	
negative consequences for Washington students and	
contravene the intent in HB 1541 (2016).	
34. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for WAC 392-400-430, students would	
be suspended without any attempt to use other forms of	The prior rules that remain in effect for the
discipline and without consideration of student's individual	2018–19 school year generally provide that
circumstances to warrant the exclusion during the 2018–19	other forms of discipline should be considered
school year. The commenters recommended that all sections	before imposing a suspension. See WAC 392-
of the final rules go into effect immediately.	400-245(2); WAC 392-400-260(4); and WAC
or the initial rules go into effect inimediately.	392-400-275(4).
35. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for the sections of the final rules	ivo detion taken. See response to 1-A-03.
concerning in-school suspension, in-school suspensions will	In-school suspensions are already regulated in
	In-school suspensions are already regulated in accordance with existing laws regarding the use
be entirely unregulated and students who are assigned in-	
school suspension during the 2018–19 school year will be	of suspensions. In accordance with WAC 392-
denied the support of school personnel to ensure their	400-610 of the final rules—and consistent with
continued academic progress. The commenters	OSPI Bulletin 050-16 "Provision of Educational
recommended that all sections of the final rules go into	Services During Suspension or Expulsion" which
effect immediately.	includes recommendations regarding in-school

Comment Summary	Response
	suspension—school districts must provide
	students who are assigned in-school suspension
	support from school personnel "to keep the
	student current with assignments and course
	work for all of the student's regular subjects or
	classes."
36. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for WAC 392-400-445(4), K–4 students	The detion taken see response to 177 os.
will continue to be expelled during the 2018–19 school year.	OSPI acknowledges that the limitation in WAC
The commenters recommended that all sections of the final	392-400-445(4), precluding school districts from
rules go into effect immediately.	expelling students in grades K–4, does not go
rules go into effect inimediately.	into effect until 2019–20 school year. However,
	according to discipline data reported to OSPI,
	expulsions for students in K–4 are rare.
	Therefore, OSPI believes the final rules are
	sufficient to adequately protect the interests of
	K–4 students.
27 Commenters expressed consern that because of the	No action taken. See response to 1-A-65.
37. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-450 and WAC 392-400-	RCW 28A.600.020(3) requires school district
520, students will continue to be suspended and emergency	procedures to "provide for early involvement of
expelled without any attempt to engage parents early during	parents in attempts to improve student's
	behavior."
the 2018–19 school year. The commenters recommended	Denavior.
that all sections of the final rules go into effect immediately.  38. Commenters expressed concern that because of the	No action taken See recogned to 1 A SE
2019 effective date for WAC 392-400-450, parent	No action taken. See response to 1-A-65.
notification for short-term suspension will not identify the	OSPI does not agree with the notion that the
behavioral violation during the 2018–19 school year. The	effective date for WAC 392-400-450—a section
commenters recommended that all sections of the final rules	containing provisions that simply augment
go into effect immediately.	existing laws (particularly RCW 28A.600.020(3),
go into effect inimediately.	which requires district procedures to provide
	that school personnel "make every reasonable
	attempt to involve the parent or guardian and
	the student in the resolution of student
	discipline problems") and agency guidance—
	will necessarily have the effect implied by the
	commenters.
39. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for WAC 392-400-465, parents will not	The action taken. See response to 1-A-03.
be notified of the opportunity to participate in a	OSPI does not agree with the notion that the
reengagement meeting during the 2018–19 school year. The	effective date for WAC 392-400-465—a section
commenters recommended that all sections of the final rules	containing provisions that simply augment
go into effect immediately.	existing laws (particularly RCW 28A.600.022(1),
50 miso effect miniculately.	which provides that school districts must
	convene a reengagement meeting with the
	student and parents following a long-term
	suspension or expulsion) and agency guidance—
	will necessarily have the effect implied by the
	commenters.
40. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for WAC 392-400-465, school districts	ivo action taken. See response to 1-A-05.
2013 ETIECTIVE date for WAC 332-400-403, SCHOOL districts	

August 13, 2018

Page 148

Comment Summary	Response
will issue untimely decisions related to suspension and	OSPI does not agree that the rules in effect for
expulsion during the 2018–19 school year. The commenters	2018–19 do not authorize school districts to
recommended that all sections of the final rules go into	issue untimely decisions.
effect immediately.	
41. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for sections of the final rules pertaining	
to language access, school districts will deny language access	The provisions in the final rules regarding
to limited English proficient parents during the 2018–19	language access simply clarify requirements
school year. The commenters recommended that all sections	under existing federal and state laws. The
of the final rules go into effect immediately.	effective date for the language access provisions of the final rules does not affect
	regulatory expectations for the upcoming
	school year.
42. Commenters expressed concern that because of the	No action taken. See response to 1-A-65.
2019 effective date for WAC 392-400-430(9), school districts	No detion taken. See response to 1 A 05.
will exclude students from their regular educational setting	OSPI does not agree with the notion that the
beyond the end date of a suspension or expulsion during the	effective date for WAC 392-400-430—a section
2018–19 school year. The commenters recommended that	containing provisions that simply augment
all sections of the final rules go into effect immediately.	existing laws and agency guidance—will
	necessarily have the effect implied by the
	commenters.
	WAC 392-400-430(9) of the final rules simply
	clarifies the agency's interpretation of already
	existing statutes. The effective date for this
	provision of the final rules does not affect
	regulatory expectations for the upcoming
	school year.
43. Hundreds of commenters stated the following:	No action taken. See response to 1-A-65.
"Washington's constitution makes it the paramount duty of	
the state to provide education to its children. But too often,	
students (especially students of color and students with	
disabilities) are excluded from their classrooms through	
suspension and expulsion. Suspensions and expulsions are	
damaging to students, making it more likely that they will	
drop out of school and end up in the school-to-prison	
pipeline. Instead of suspensions, the state and school	
districts should ensure that parents are engaged in	
addressing behavioral issues early on, and that teachers and	
school administrators use positive and preventative	
strategies to make sure that students have what they need	
to be successful in school."	
"The dissipline vales that OCDI has a second will had	
"The discipline rules that OSPI has proposed will help ensure	
that parents are engaged in addressing problems and that	
suspensions and expulsions are imposed after schools have tried other strategies. The rules are consistent with HB 1541,	
which was introduced in 2015 and became effective in June	
2016. It has been over 3 years since the legislation was	
2010. It has been over 3 years shille the registation was	

Comment Summary	Response
introduced and 2 years since it became effective. Every day	
that the rules are delayed denies Washington's students	
opportunities to stay in school and continue learning.	
"Washington's kids cannot wait another year for discipline	
reform. OSPI should ensure that its discipline rules fully go	
into effect during the 2018-2019 school year."	
Several dozen of these commenters added additional	
comments about the proposed effective dates for the	
proposed rules.	
44. Commenter shared their personal experience as a	No action taken. See response to 1-A-65.
parent of a student who was suspended. The commenter	
described their experience appealing the suspension with	
the district. After they won the appeal, the school district	
administratively transferred their student to another	
school, where the student was disciplined for leaving class	
early even though he had permission. The parent stated that their student is not safe in this school, noting that they	
now hate school and have become suicidal, but the school	
district will not allow another option.	
district will not allow another option.	
The commenter noted that the school district administers	
overly harsh, punitive discipline practices towards students	
of color. The district says they are reforming and using	
restorative practices, but that has not been the	
commenter's experience.	
The commenter noted that students in their school district	
need this reform now. "Please help them make the changes	
they aspire to as soon as possible. They are having a hard	
time doing it on their own. Time is running out for some	
students."	
45. Commenter shared their personal experience as a	No action taken. See response to 1-A-65.
parent of a student with disabilities who has been	
suspended and expelled several times. The commenter	
urged OSPI to not extend any more time to school districts to	
implement changes in the rules. "It is not fair to my daughter	
or the other children whom have gone through school being	
treated like they are bad kids. The damage that the schools	
policies have caused to our children is irreparable. Don't let	
this continue."	No ordina talian C
46. Commenter shared their personal experience as a	No action taken. See response to 1-A-65.
parent of a student with disabilities who had been	
suspended because of manifestations of their disability. The	
commenter observed that students with disabilities and	
students of color appear to be disciplined more than other	
students. The commenter urged OSPI to enact the proposed rules as soon as possible, noting that disproportionality in	
raies as soon as possible, nothing that disproportionality in	

August 13, 2018

Page 150

Comment Summary	Response
discipline continues to be a problem, and students need	
protections now.	
47. Commenter stated that these policies should go into	No action taken. See response to 1-A-65.
effect as soon as possible. The commenter noted they hope	
these policies can be big steps to break the cycle of the	
school-to-prison pipeline.	
48. Commenter noted the need for these new rules is	No action taken. See response to 1-A-65.
critical. "Diminished safeguards and protections of students	
of color is occurring through the Department of Education	
and other federal agencies. Black and Brown students	
receive suspension and expulsion disciplines at rates far	
higher than their White peers. The time is now for revising	
student discipline rules as called for by many organizations."	
49. Commenter recommended OSPI put the rules in place	No action taken. See response to 1-A-65.
now. The commenter questioned who benefits by waiting a	
year to implement the new rules. The commenter noted that	
by reducing suspension and expulsion, and giving healthy	
alternatives, we may just change a child's life.	
50. Commenter noted that the law changed in 2016, and	No action taken. See response to 1-A-65.
they continue to see school districts fail to comply with the	
changes in the law. Another school year without the	
regulations in place means students will continue to not	
have their needs met. The commenter recommended OSPI	
enact the entire chapter now.	
51. Commenter stated that school districts need training,	Comment noted. OSPI intends to provide
resources, and support to implement the rules.	technical assistance and guidance to assist
	school districts, parents, and advocates in
	implementing the rules.
52. Two commenters provided comments on the prior	Comment noted.
student discipline rules.	

#### 3-B. WAC 392-400-010. Purpose.

Comment Summary	Response
1. Commenter recommended WAC 392-400-010(5) read	No action taken. See response to 2-A-3.
"Administer discipline in ways that respond to the needs and	
strengths of <u>all</u> students, support students in meeting	
behavioral expectations, and keep students in the classroom	
to the maximum extent-whenever possible." The commenter	
noted that removing a repeatedly disruptive or violent	
student from the classroom is responding to the needs of	
the rest of the students in that class. The commenter also	
noted that "maximum extent" goes above and beyond what	
is reasonable.	

## 3-C. WAC 392-400-015. Authority.

Comment Summary	Response
No comments.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018

Page 151

## 3-D. WAC 392-400-020. Application.

Comment Summary	Response
No comments.	

# 3-E. WAC 392-400-023. Definitions. (Effective for 2018–19 school year only)

Comment Summary	Response
1. Commenter noted that proposed WAC 392-400-023	Comment noted.
does not include a definition for "in-school suspension."	

# 3-F. WAC 392-400-025. Definitions. (Effective July 1, 2019)

Comment Summary	Response
Commenter noted that the proposed rules do not	No action taken. See response to 1-E-4.
include a definition for "corrective action."	
2. Commenter recommended OSPI retain the current	No action taken. See response to 1-E-4.
definition for "discipline."	
3. Commenter noted that the proposed rules do not	Comment noted.
include a definition for "discretionary discipline."	
4. Commenter expressed appreciation for the clarification	Comment noted.
to the "classroom exclusion" definition.	
5. Several commenters observed that OSPI removed	No action taken. See responses to 1-A-16 and
provisions from the proposed rules that prohibited school	1-A-19.
districts from administratively transferring a student because	
of a behavioral violation. "Deleting the prohibition indicates	
to us that a school district would be allowed to	
administratively transfer a student regardless of whether the	
transfer is a response to a student violating a school district's	
discipline policy. However, there is some ambiguity as to	
whether an administrative transfer might nevertheless be	
treated as a suspension or expulsion under the proposed	
rules."	
The commentary required OSDI planify the definitions of	
The commenters requested OSPI clarify the definitions of	
expulsion and suspension as follows:	
"'Expulsion' means a denial of admission to the student's	
current school placement in response to a behavioral	
violation, other than an administrative transfer, subject to	
the requirements in WAC 392-400-430 through 392-400-	
480."	
"'Suspension' means a denial of attendance in response to a	
behavioral violation from any subject or class, or from any	
full schedule of subjects of classes, but not including	
classroom exclusions, expulsions, administrative transfers, or	
emergency expulsions."	

August 13, 2018

Page 152

Comment Summary	Response
6. Commenter recommended OSPI reduce the maximum	No action taken. See response to 1-I-9.
amount of days a student may be short-term suspended. The	
commenter stated they believe state law permits OSPI to do	
less than 10, noting 10 days is a guidepost and not an	
absolute requirement. Every day a student is out of school	
has a significant impact on that student's progress, and a	
significant disproportionality exists in how short-term	
suspensions are imposed for students of color.	

#### 3-G. WAC 392-400-110. Discipline policies and procedures—Development, review, and distribution.

Comment Summary	Response
Commenter recommended that all school district	No action taken. See responses to 1-A-25 and
policies on student discipline include a preamble statement	1-A-83.
on positive strategies to support students in meeting	
behavioral expectations.	

#### 3-H. WAC 392-400-230. Persons authorized to impose discipline, suspension, or expulsion upon students.

Comment Summary	Response
No comments.	

#### 3-I. WAC 392-400-233. Absences, tardiness, and school meals.

Comment Summary	Response
No comments.	

#### 3-J. WAC 392-400-235. Discipline—Conditions and limitations.

Comment Summary	Response
No comments.	

#### 3-K. WAC 392-400-330. Classroom exclusions—Conditions and limitations.

Comment Summary	Response
Commenter suggested the classroom exclusion rule	No action taken. OSPI believes the
allow for a multiple day in-school suspension, like a	commenter's proposed change is not
"behavioral classroom."	necessary because the final rules provide that
	a school district may administer in-school
	suspension following a classroom exclusion.

#### 3-L. WAC 392-400-335. Classroom exclusions—Notice and procedure.

Comment Summary	Response
1. Commenter noted that the requirement to report all	No action taken. See response to 1-H-3.
classroom exclusions to the superintendent or designee is	

August 13, 2018

Page 153

Comment Summary	Response
excessive. If the purpose of a classroom exclusion is to	
address an issue before administering discipline, then a	
reporting requirement to the superintendent is unnecessary.	
Such a requirement will actually inhibit educators in	
engaging in pre-discipline.	
2. Commenter stated that it is unnecessary to require a	No action taken. See response to 1-H-3.
school to notify the superintendent or designee regarding	
every classroom exclusion, noting this will be a burden for	
school and district staff. The commenter observed that the	
cost for reviewing this data outweighs any benefit for	
knowing how many students are sent to the office each day.	
3. Commenter noted it is not necessary to require a school	No action taken. See response to 1-H-3.
to notify the superintendent or designee about classroom	
exclusions. This process takes considerable time and effort.	

# 3-M. WAC 392-400-430. Suspensions and expulsions—General conditions and limitations.

Comment Summary	Response
1. Commenter recommended OSPI remove the subsection	No action taken. The language in this section
related to completing academic requirements.	of the final rules is consistent with RCW
	28A.600.015(5) and 28A.600.015(8)
	prohibiting school districts from suspending
	the provision of educational services to a
	student as a discipline action and WAC 392-
	400-235(1) of the prior rules which provided
	that "No form of discipline shall be enforced in
	such a manner as to prevent a student from
	accomplishing specific academic grade,
	subject, or graduation requirements."
2. Commenter recommended parents be held financially	No action taken. OSPI disagrees with the
responsible for their child's education if their child is	commenter's suggestion that parents be
expelled.	financially responsible for their child's
	education during a suspension or expulsion.
	RCW 28A.600.015(5) and 28A.600.015(8)
	prohibit school districts from suspending the
	provision of educational services to a student
	as a discipline action.
3. Several commenters expressed concern regarding the	No action taken. See response to 1-I-16 and 1-
requirement that a school district must return a student to	I-19.
their regular educational setting after a suspension or	
expulsion. The commenters noted the three narrow	
exceptions to this rule do not address the full extent of their	
concerns. The commenters stated that students will	
sometimes perform better in the alternative settings where	
they have been placed during a suspension or expulsion, and	
they should not be returned to their regular educational	
setting. The commenters also noted that there are times	
when it is in a student's best interest to continue learning	
social emotional skills in a smaller, more intimate setting	

August 13, 2018

Page 154

Comment Summary	Response
before re-introducing the student back into the regular educational setting. "Prohibiting a school district from doing	
what is in the student's best interest just because 'time is up'	
on the suspension or expulsion seems arbitrary to us."	
The commenters recommended WAC 392-400-430(9)(b) be	
revised as follows: "If a school district enrolls a student in	
another program or course of study during a suspension or	
expulsion, the district may preclude the student from	
returning to the student's regular educational setting	
following the end date of the suspension or expulsion if the district deems it in the best interest of the student or	
district deems it in the best interest of the student of	
4. Commenter recommended OSPI remove the provision	No action taken. See response to 1-I-16 and 1-
that requires a school district to make reasonable efforts to	I-19.
return the student to the student's regular educational	5.
setting as soon as possible. The commenter recommended a	
student not return until the suspension or expulsion is over.	
5. Commenter observed that the rules are very repetitive	No action taken. OSPI believes the rules are
and could be consolidated to make more succinct and to the	clearly and concisely written. Consistent with
point reading. The commenter suggested that the conditions	OSPI's statutory authority under RCW
and limitations sections could be consolidated to one	28A.600.015(1), OSPI believes different
section.	discipline actions require different conditions
	and limitations to adequately protect the
	interest of students.

## 3-N.WAC 392-400-435. Short-term and in-school suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter noted that the 10-day limit to suspensions	No action taken. See response to 1-J-5.
for students in grades K–4, while well-intentioned, is	
occasionally quite challenging. They observed that students	
frequently display aggressive and dangerous behaviors in	
primary grades, resulting in physical harm to teachers,	
paraprofessionals, and other students. They recommended	
that the limit should align with the 15-day limit currently	
stipulated in grade 5.	
2. Commenter stated that students in grades K–4 should	No action taken. See response to 2-J-2.
not be suspended. "Too many kindergarten and early	
elementary grade-level Black students are currently	
suspended from school. Development of appropriate	
classroom behavior is a key component in these early years	
of education. Suspension is not the appropriate tool for	
assisting students to meet behavioral expectations."	
3. Commenter recommended OSPI remove grade-level	No action taken. See response to 1-J-5.
limitations to short-term suspensions.	

# 3-O.WAC 392-400-440. Long-term suspensions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter expressed support for the limitations on long-term suspensions and expulsions for students in grades K–4. The commenter shared their personal experience as a parent of a student with disabilities who has experienced punitive discipline for several years. They observed that instead of providing the student with the services they needed, the school suspended and expelled the student multiple times.	Comment noted.
2. Several commenters opposed the prohibition on long-term suspensions and expulsions for students in grades K–4. The commenters noted the Legislature allows school districts to long-term or expel any student for nondiscretionary offenses. The commenters also stated the limitation is arbitrary: "Why is a fourth grader who stabs his teacher with scissors or who punches her in the nose different from a fifth grader who does the same thing?"	No action taken. See response to 1-J-5.
3. Commenter raised concern about the prohibition on long-term suspensions and expulsions for students in grades K–4. The commenter noted that there are angry and violent fourth graders who do not carry firearms but pose an equal threat to staff and students.	No action taken. See response to 1-J-5.

## 3-P. WAC 392-400-445. Expulsions—Additional conditions and limitations.

Comment Summary	Response
1. Commenter raised concerns regarding the prohibition on expulsion for students in grades K–4. "In the worst case scenario, a fourth grade student could murder a classmate with a knife and the school would be able to keep the student out of school for only 10 days via emergency expulsion."	No action taken. See response to 1-J-5.
2. Commenter suggested that if the only difference between a long-term suspension and expulsion is that a principal can petition to extend an expulsion, the two removal types may be combined.	No action taken. See response to 3-M-5.

## 3-Q.WAC 392-400-450. Suspensions and expulsions—Initial hearing with student.

Comment Summary	Response
Commenter expressed concern that the proposed WAC	No action taken. See response to 1-M-5.
392-400-465 deprives a student of their basic right to an	
education without offering them a meaningful pre-	
deprivation opportunity to be heard. While they appreciate	
OSPI's effort to have greater parent participation at the	
initial hearing stage, the rules do not sufficient ensure parent	
or guardian participation and thus fail to protect a student's	
rights to an education and due process. "Without meaningful	

August 13, 2018

Page 156

Comment Summary	Response
parental or guardian participation at the initial hearing, a	
student-perhaps even a very young or disabled student-will	
alone face the full authority of a school official, and alone	
have the responsibility of mounting a defense. This	
possibility risks vitiating the remaining procedural	
protections in these rules."	
The commenter recommended that parents be allowed a	
meaningful opportunity to participate in an initial hearing.	
They recommend that the initial hearing be replaced with a	
"principal conference," and the optional conference	
removed. If the initial hearing is retained, schools must	
ensure parental participation by telephone. The person	
conducting the initial hearing or the principal conference	
should not be the person imposing the discipline.	
2. Commenter recommended that, at the initial hearing,	No action taken. See response to 1-M-5.
the principal or designee must provide a warning to the	
student that any admissions made at an initial hearing or	
principal conference could adversely affect a later appeal.	

#### 3-R. WAC 392-400-455. Suspensions and expulsions—Notice to student and parents.

Comment Summary	Response
No comments.	

#### 3-S. WAC 392-400-460. Suspensions and expulsions—Optional conference with principal.

Comment Summary	Response
No comments.	

#### 3-T. WAC 392-400-465. Suspensions and expulsions—Appeal.

Comment Summary	Response
1. Several commenters stated the appeal procedures provided to students are far more extensive and contentious than they should be, and they requested OSPI reconsider paring down the appeal rights given to students. "There is no	No action taken. See response to 1-P-2.
need to have such an elaborate appeal scheme, especially when students who are suspended and expelled receive robust educational services."	

#### 3-U.WAC 392-400-470. Suspensions and expulsions—Review and reconsideration.

Comment Summary	Response
No comments.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018
Page 157

#### 3-V. WAC 392-400-475. Discipline appeal council.

Comment Summary	Response
No comments.	

#### 3-W. WAC 392-400-480. Petition to extend expulsion.

Comment Summary	Response
No comments.	

## 3-X. WAC 392-400-510. Emergency expulsions—Conditions and limitations.

Comment Summary	Response
1. Several commenters raised concern that OSPI reinserted language into the proposed rules with respect to emergency expulsions for behavior that presents a "threat of material and substantial disruption of the educational process." The commenters noted that OSPI removed this language from the second supplemental proposed rules but reinserted it in the third supplemental proposed rules. The commenters stated that a "threat of material and substantial disruption of the educational process" does not meet the standard set by HB 1541 that students may not be long-term suspended or expelled for "discretionary discipline."	No action taken. See response to 1-E-7 and 2-A-48.
"For example, a student who threatens self-harm may 'disrupt' his or her own educational process and under the current proposed rules be subject to emergency expulsion. But, as OSPI has recognized in the past, self-harm should not be a basis for denial of the right to education and emergency expulsion. Similarly, a student who is under the influence of drugs or alcohol may temporarily disrupt the educational process, but simply being under the influence is not itself a non-discretionary discipline offense under HB 1541 and thus cannot be the basis for a long-term suspension or expulsion."	
The commenter urged OSPI to limit emergency expulsion to instances of immediate and continuing danger to other students or school personnel.	
2. Commenter recommended that emergency expulsions should not be available to school districts for discretionary use. "We see students with Autism routinely subjected to emergency expulsions for behaviors related to their disabilities. In addition, we see students who have exhibited threats of self-harm also routinely subjected to emergency expulsions. The commenter observed that students with	No action taken. See response to 1-E-7.

August 13, 2018

Page 158

Comment Summary	Response
Autism often engage in behavior which has been described	
by school districts as "disruptive to the educational	
environment," which results in an emergency expulsion.	
These behaviors include elopement, stimming, spinning,	
repetitive noises or movement and failure to follow	
directions, etc.	
The commenter also noted that while the purpose of	
emergency expulsions is to allow school districts to develop	
plans to provide for safety, they have found that not to be	
the case. "In our experience, emergency expulsions are	
routinely used by school districts for non-emergency	
behavioral issues, resulting in crisis situations for families	
who are unable to effectively mobilize help in a short time	
frame." The commenter recommended that instead of	
relying on emergency expulsions, IEP teams should develop	
and implement more effective behavioral supports.	
Emergency expulsions should be reserved for situations	
involving extreme dangerous behaviors, not failures of the	
IEP or Behavior Intervention Plan.	
3. Commenter expressed support for adding ""immediate	Comment noted.
and continuing threat of material and substantial disruption"	
back to the definition of emergency expulsion.	
4. Commenter raised concerns pertaining to WAC 392-400-	Comment noted. OSPI believes the examples
510(2)(b), regarding school personnel exhausting reasonable	of behavior the commenter's offer here would
attempts at administering other forms of discipline to	likely demonstrate sufficient cause that the
support a student in meeting behavioral expectations before	student's presence poses an immediate and
determining that the student poses an immediate and	continuing danger to other students or school
continuing threat of material and substantial disruption of	personnel, thereby warranting an emergency
the educational process. The commenter noted that this may	exclusion under WAC 392-400-510(2)(a).
not be reasonable or practical. The commenter shared	
examples of needing to emergency expel a student for	
setting fire to a school bathroom and a student for threating	
another student with a knife. In these cases, there was not	
time to exhaust reasonable attempts at administering other	
forms of discipline.	

# 3-Y. WAC 392-400-515. Emergency expulsions—Notice to student and parents.

Comment Summary	Response
No comments.	

## 3-Z. WAC 392-400-520. Emergency expulsions—Optional conference with principal.

Comment Summary	Response
No comments.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 159

## 3-AA. WAC 392-400-525. Emergency expulsions—Appeal.

Comment Summary	Response
1. Commenter observed that, as an independent hearing officer, 24 hours to complete a reasoned, supported, comprehensive decision on an emergency expulsion is a real problem for hearing officers who also practice law full-time. The commenter recommended the turnaround time be expanded to 48 hours.	No action taken. The provision under WAC 392-400-525(9) of the final rules, which requires a school district to provide a written decision regarding the emergency expulsion appeal to the student and parents "within one school business day after the appeal hearing" is consistent with WAC 392-400-305(6) of the prior rules—which provided that "[w]ithin one school business day after the date upon which the hearing concludes, the person(s) hearing the case shall issue a decision regarding whether the emergency expulsion shall continue."  In accordance with the agency's rulemaking authority under RCW 28A.600.015, the agency determined the appeal decision timeline for emergency expulsions should remain in place to adequately protect the interest of students.

## 3-BB. WAC 392-400-530. Emergency expulsions—Review and reconsideration.

Comment Summary	Response
No comments.	

## 3-CC. WAC 392-400-610. Educational services during suspension, expulsion, or emergency expulsion.

Comment Summary	Response
1. Commenter suggested WAC 392-400-610(1)(a) be	No action taken. See response to 1-I-26.
revised to read "The educational services must be designed	
in a way to make it more likely that the student will be able	
to enable the student to (a) continue to participate in the	
general education curriculum; (b) meet the educational	
standards established within the district; and (c) complete	
subject, grade-level, and graduation requirements.	
2. Commenter raised concerns regarding the provision	No action taken. See response to 1-I-26.
that requires a school district to provide educational services	
that enable a student to continue to participate in the	
general education curriculum. The commenter noted this is	
vague and may not be practical or feasible.	
3. Several commenters recommended OSPI clarify "subject	No action taken. See response to 1-I-26.
requirements." "If a student is in a shop class when expelled,	
does the school district have to provide the student access	
to shop equipment so he or she can complete the subject	
requirements? Does the school district have to provide the	
student with an alternative to meet the specific shop class	
requirements? Or does the school district even need to keep	
the student enrolled in shop class as long as it provides	
educational services to keep the student on track for	
graduation?"	

Comment Summary	Response
4. Several commenters noted that that forcing schools to allow long-term suspended or expelled students to complete the requirements of each of the student's classes may have consequences because it can severely hamper a school if it is required to provide a student with course work in any specific class, such as shop class.  The commenter recommended OSPI revise WAC 392-400-610(1) as follows:	No action taken. See response to 1-I-26.
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.	
5. Commenters recommended the educational services requirements be the same for short-term suspensions of 1–4 days and 5–10 days. One commenter noted the distinctive procedures are overly burdensome and will result in procedural errors by schools. Another commenter noted the only distinction is that school personnel must make a reasonable attempt to contact the parents.	No action taken. See response to 1-Y-1.
6. Commenter suggested the timeline for contacting the student and parents in WAC 392-400-610(4)(b) be three school days instead of three school business days. The commenter noted that there are some days the superintendent's office is open but schools are closed.	No action taken. OSPI declines to adopt commenter's proposed language. WAC 392-400-610(4)(b) is intended to ensure that students who are suspended or expelled receive reasonably prompt support from school district personnel at the start of the suspension or expulsion.
7. Several commenters noted that the new language in WAC 392-400-610 that mirrors RCW 28A.600.0.0(7) is very helpful and consistent with the law. However, the commenter observed that the section is now internally inconsistent because while the new language says a school district may provide educational services to a student in an alternative setting, OSPI still requires districts to provide educational services in an alternative educational setting to students who are long-term suspended or expelled. The commenter recommended OSPI delete subsection (6) and amend subsection (5) to describe the required educational services for all exclusions above 5 days.	Action taken. See responses to 1-I-16 and 1-I-19.

## 3-DD. WAC 392-400-710. Student reengagement after long-term suspension or expulsion.

Comment Summary	Response
No comments.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 161

## 3-EE. WAC 392-400-805. Fundamental rights.

Comment Summary	Response
No comments.	

# 3-FF. WAC 392-400-810. Long term suspensions and expulsions administered by another school district Exceptions for the purpose of protecting victims.

Comment Summary	Response
Long-term suspensions and expulsions administered by anot	ther school district
1. Several commenters expressed support for OSPI removing the proposed language that would allow schools almost unfettered discretion to continue to administer long-term suspension and expulsion administered by another school district. However, the commenters expressed concern that the proposed rules no longer include any language on continuing suspensions or expulsions from another district. The commenters recommended OSPI return to its initial proposal. Alternatively, the commenters recommended the rules, at a minimum require districts to "enroll the student and provide educational services and a reengagement meeting, find an immediate and continuing threat of disruption or danger to others before continuing a suspension or expulsion from another district, and provide due process to students.	No action taken. See response to 1-BB-2.
Commenter noted that they prefer the stricken language that expressly permitted a school district to continue another school district's suspension or expulsion.	No action taken. See response to 1-BB-2.
Exceptions for the purpose of protecting victims	
3. Commenter noted that in the event of an assault, threatening, or dangerous situation, it is absolutely correct that victims should be protected and the offending student should be removed from their regular educational setting for the duration of the student's/teacher's attendance at that school or any other school where the victim is enrolled. Fear has no place in our schools. "That language and its application show your concern and desire to protect all students and educational staff, and create a safe and supportive learning environment for everyone."	Comment noted.
4. Commenter recommended that sexual offenses be included in the list of reasons that a student may be excluded from a victim's classroom.	No action taken. OSPI declines to adopt the commenter's proposed change because "harassment" under chapter 9A.46 RCW may include, but is not limited to, several sexual offenses.  In addition, WAC 392-400-430(9) provides that school districts may preclude a student from returning to the student's regular educational setting following the end date of a suspension or expulsion when the student is otherwise precluded under law from returning to the setting.

August 13, 2018

Page 162

Exceptions for the purpose of protecting victims	
5. Several commenters requested OSPI clarify the extent	No action taken. The final rules are consistent
to which a school district may preclude a student from	with the statutory provisions under RCW
returning to his or her regular educational setting under	28A.400.460—which provides that a school
proposed WAC 392-400-810. The commenters suggest the	district may remove the student "from the
rule would still permit an offending student to be returned	classroom of the victim for the duration of the
to the same school where their victim teachers or attends.	student's attendance at that school" but does
Commercial Commercial	not authorize a school district to exclude a
Comment Summary  The commenters recommend the section be amended to	Response student from the student's current school
	placement.
read: "A school district may preclude a student from returning to the student's regular educational setting,	piacement.
classroom, school, or program following the end date of a	
suspension or expulsion for the purposes of protecting	
victims described in RCW 28A.600.460."	
6. Commenter expressed support for the new section	Comment noted. The final rules are consistent
"exceptions for the purpose of protecting victims." However,	with the statutory provisions under RCW
the commenter expressed concern that other staff besides	28A.400.460—which provides that a school
teachers, such as paraprofessionals, are not protected under	district may remove the student from the
this rule. The commenter also noted the rule is specific to	classroom of the victim for the duration of the
classrooms, and suggested that hallways and other areas of	student's attendance at that school, but does
schools should also be addressed.	not authorize a school district to exclude a
00.100.100.100.100.100.100.100.100.100.	student from the student's current school
	placement.
	F 111
	The final rules do not limit school districts
	from taking a range of appropriate actions to
	protect victims without resorting to
	suspension or expulsion, such as providing
	increased supervision to a student in
	classrooms, hallways, and other areas of the
	school or using threat assessments to manage
	or reduce a threat posed by a student.
7. Commenter observed that it is challenging for a small	No action taken. OSPI declines to adopt the
and rural school district to return a student to different	commenter's proposed changes because it
classroom to protect a victim, noting they often have one	believes that OSPI sponsorship of an online
teacher per grade. The commenter suggested OSPI sponsor	program is outside the scope of this
an online school program for school districts that lack	rulemaking.
resources.	
8. Commenters noted that we need to protect all our	Comment noted. See response to 3-FF-5.
students by protecting a student victim by removing the	
offending student from the classroom or school of the victim	
for the duration of the student's attendance at that school or	
any other school where the victim is enrolled.	

## 3-GG. WAC 392-400-815. Behavior agreements.

Comment Summary	Response
1. Commenter noted that limiting behavior agreements to	No action taken. See response to 1-CC-5.
not exceed the length of an academic term seems	
unrealistic. Behavioral psychologists will affirm that	
behaviors do not disappear in days of even weeks. Egregious	
learned behaviors often require longer periods of time for	
successful intervention and new learning to occur.	
Commenter recommended that they would support	
language that would require Behavior Agreements to be	
adjusted each term they are in place.	
2. Commenter noted it will be burdensome for school staff	No action taken. See response to 1-CC-5.
to review Behavior Contracts with students and families each	
academic term. If there is a need to mandate a review of a	
Behavior Contract, these should be done annually in the	
same way that an IEP and 504 plan is reviewed annually.	
3. Several commenters noted that the limiting the duration	No action taken. See response to 1-CC-5.
of behavior agreements to the length of an academic term	
seems arbitrary, and they recommend OSPI delete it. They	
noted that if a student enters into a behavior agreement to	
transfer schools rather than be expelled, a longer duration	
for the behavior agreement would be needed. "Allowing	
longer behavior agreements would give parents and schools	
the opportunity to work together in finding mutually	
beneficial solutions for students, parents, and schools."	
4. Commenter noted that behavior agreements are positive	No action taken. See response to 1-CC-5.
and are designed to incentivize good behavior. The	
commenter suggested the duration of behavior agreements	
not be limited to one term.	

## 3-HH. WAC 392-400-820. Firearm exceptions.

Comment Summary	Response
1. Commenter suggested WAC 392-400-820 include	No action taken. The language in WAC 392-
language regarding police involvement.	400-820 of the final rules simply aligns with
	the statutory language in RCW 28A.600.420.

# 3-II. WAC 392-400-825. Corporal punishment, restraint, and isolation.

Comment Summary	Response
Commenter recommended that schools should be	No action taken. OSPI declines to adopt the
allowed to impose physical consequences, such as running	commenter's suggested change because OSPI
laps, for discipline in a physical education class.	believes it is never appropriate to impose
	physical pain or discomfort on students in
	response to behavioral violations, including
	involuntary participation in recreational
	activity. See WAC 392-400-825(1).

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 164

## 3-JJ.WAC 392-400-830. School meals.

Comment Summary	Response
Commenter recommended the school meals provision	No action taken. The language in the final rules
be revised to read, "may not result in the denial or	aligns with the statutory provision under RCW
significant delay" Commenter observed that without that	28A.235.270(1)(d).
adjustment, students would be allowed to walk out of the	
principal's office as soon as they hear their lunch bell ring.	
The commenter noted that disciplinary actions may result in	
changes to a student's lunch schedule. As written, the rule	
would preclude such changes from being allowed.	

Concise Explanatory Statement: Chapter 392-400 WAC, v.2 August 13, 2018 Page 165

OSPI provides equal access to all programs and services without discrimination based on sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal by a person with a disability. Questions and complaints of alleged discrimination should be directed to the Equity and Civil Rights Director at 360-725-6162 or P.O. Box 47200, Olympia, WA 98504-7200.