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# SUPERINTENDENT OF PUBLIC INSTRUCTION

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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**

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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**

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### **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: [Student Discipline Rules](#).

**III. REASON FOR ADOPTION**

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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 is suspended or expelled.

**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
<b>School Safety and Educational Environment</b>	
<p>1. Commenter shared their personal experience as a parent of a student who has been threatened by a classmate. The commenter noted the school would not remove the student due to limitations on suspensions. The commenter proposed that students who threaten to kill others should be, at a minimum, removed from school for up to a year, as students are for bringing firearms to school. Suspensions or expulsions for these types of behavioral violations should be required. The commenter also recommended there should be no limit to the cumulative days of suspensions, or academic term limit, for violent, aggressive, assaultive, threatening, or repeated substantial disruptive behavior. "I simply want to keep students safe. I don't know if you even knew that administrators are forced to overlook some of these behaviors because they only have a limit of so many days they can suspend a student. . . . Your laws prevent that from happening due to the suspension limitations."</p>	<p>No action taken. OSPI's statutory authority to prescribe rules governing the procedural and substantive due process guarantees of students in schools is constrained by other statutes governing student discipline. Limitations on the maximum length of a suspension or expulsion are established in statute under RCW 28A.600.020(6), and limitations on the types of behavior for which a district may consider long-term suspension or expulsion are established in RCW 28A.600.015(6). OSPI believes it is therefore precluded by law from amending the rules in the manner requested by the commenter.</p> <p>In addition, OSPI does not believe the commenter's proposed change is necessary to address cases where students present violent behavior. RCW 28A.600.020(6) and WAC 392-400-</p>

	<p>410 allow districts to expel students for longer 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 expulsion--including using threat assessments to manage or reduce a threat posed by a student.</p>
<p>2. Several commenters noted that schools and classrooms must be a safe learning environment for all students.</p>	<p>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.</p>
<p>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.</p>	<p>Action taken. See response to 1-A-2.</p>
<p>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 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.</p>	<p>Comment noted. See response to 1-A-2.</p>
<p><b>Students with Disabilities</b></p>	
<p>5. Commenter noted that it's a world of difference 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</p>	<p>Comment noted.</p>

<p>would require the student to remain in school were inconvenient.</p>	
<p>6. Commenter expressed concerns about how the rules will integrate with existing state and federal law regarding discipline of students receiving special education services.</p>	<p>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.</p>
<p>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 exclusionary discipline and efforts to decrease its use.</p>	<p>Comment noted. See response to 1-A-6.</p>
<p>8. Commenter suggested that the rules clarify how a student’s behavior intervention plan (BIP) should be more fully integrated in the child’s school discipline.</p>	<p>No action taken. See response to 1-A-6.</p>
<p>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.</p>	<p>Comment noted. See response to 1-A-6.</p>
<p>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.”</p>	<p>Comment noted. See response to 1-A-6.</p>
<p>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</p>	<p>No action taken. See response to 1-A-6.</p>

<p>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.</p>	
<p>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 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.</p>	<p>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.</p>
<p>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.”</p>	<p>No action taken. OSPI believes the commenter’s proposed change is outside the scope of this rulemaking as authorized under RCW 28A.600.015.</p>
<p>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.</p>	<p>No action taken. See response to 1-A-6.</p>
<p><b>Best Practices and Alternatives to Suspension</b></p>	
<p>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.</p>	<p>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 menu 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.</p>

<p>16. Several commenters expressed support for researching and implementing best practices, including resources such as OSPI’s menu of best practices for behavior.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>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.</p>
<p>18. Commenter noted that schools, families, and children need resources, support, and behavioral interventions.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>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 positive behavioral intervention strategies as best practices.</p> <p>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 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.</p>
<p>20. Commenter noted the overall approach to school discipline needs to change from a punitive model to a positive behavior, restorative justice approach with the youth at the center.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>Comment noted. See response to 1-A-19.</p>

<p>The commenter recommended OSPI embrace nonviolent options of communication instead of suspension. Model humanity rather than disparaging or derogatory behavior.</p>	
<p>22. Commenter expressed appreciation that the rules 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.</p> <p>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.</p>	<p>Comment noted.</p>
<p>23. Commenter suggested schools should provide a safe 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.</p>	<p>Comment noted.</p>
<p>24. Commenter shared their personal experience as a 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.</p>	<p>Comment noted.</p>
<p>25. Commenter expressed support for the use of evidence-based restorative systems as alternatives to exclusion, especially for students who are high risk. The commenter observed that exclusions for behaviors such as disrespect are subjective, and kids learn best about their impact on other people when they have an opportunity to stay in relationship with others. Exclusions teach kids “I don’t belong here, I’m bad,” especially for students who have already experienced trauma.</p> <p>The commenter suggested OSPI should recommend in-school suspension as the best practice because it’s hard to replicate education in a short-term suspension.</p> <p>The commenter also recommended schools be required to document the use of best practices.</p>	<p>No action taken. OSPI believes the commenter’s proposed change is not necessary because the final rules require school districts to provide written notice of any suspension or expulsion to students and parents identifying other forms of discipline that the district considered or attempted, and an explanation of the district’s decision to administer the suspension or expulsion. <i>See WAC 392-400-455(2).</i></p> <p>Starting in the 2019–20 school year, moreover, 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</p>



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

<p>The commenter suggested the rules should clarify whether a student who is suspended may still participate in commencement or other graduation ceremonies.</p>	<p>expulsion, OSPI believes the rules' due process procedures for suspension or expulsion would apply.</p>
<p>29. Commenters expressed support for the early and 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.</p>	<p>Comment noted.</p>
<p>30. Commenter expressed concerns that discipline issues could be the due to a lack of successful communication between the teacher and student. Commenter suggested that a meeting be scheduled between the student's parent or guardian and teacher, while giving parents the right to request a third-party mediator to help resolve the issue. The school district should notify the parent(s)/guardian in writing and an acknowledgment of receipt of notification from the parents/guardian should be required. School districts should provide interpreters or translators when needed.</p>	<p>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.</p>
<p>31. Commenters recommended that the rules recognize 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.</p>	<p>Action taken. See response to 1-A-30.</p>

<p>32. Commenter encouraged OSPI to provide significant training and guidance on best strategies for parent communication.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>35. Commenter recommended parents have an advocate available for parents to guide them through the confusing discipline process.</p>	<p>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.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>Action taken. See response to 1-A-30.</p>
<p>38. Commenter suggested that OSPI require districts to provide language access services to parents for informal conferences with school administrators.</p>	<p>Action taken. See response to 1-A-30.</p>
<p>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.</p>	<p>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.</p>
<p>40. Several commenters expressed support that the proposed rules clarify a district's obligations under state and</p>	<p>Action taken. See response to 1-A-30.</p>

<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• Initial hearing with student (WAC 392-400-450)</li> <li>• Optional conference with principal (WAC 392-400-460)</li> <li>• Notice of classroom exclusion (WAC 392-400-335)</li> <li>• Notice of educational services (WAC 392-400-610)</li> <li>• Notice of the decision to convert an emergency expulsion to a suspension or expulsion (WAC 392-400-510).</li> </ul>	
<p>41. Commenter recommended that the rules state that schools can use Title II funds for discipline-related interpretation and translation services.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>Comment noted.</p>

<p>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.</p>	<p>No action taken. The final rules generally permit school districts to provide notice of disciplinary actions by e-mail. <i>See, e.g.,</i> 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.</p> <p>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.</p>
<p><b>Cultural Responsiveness</b></p>	
<p>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.</p>	<p>Comment noted.</p>
<p>47. OSPI should provide more instruction to schools on what it means to be culturally competent in implementing discipline.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>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.</p>
<p>49. Several commenters recommended that the rules provide more clarity and accountability regarding culturally responsive practices.</p>	<p>Action taken. See response to 1-A-48.</p>
<p>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 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.</p>	<p>Comment noted. See response to 1-A-48.</p>

<p>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.</p>	<p>Comment noted.</p>
<p><b>Disproportionate Discipline</b></p>	
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p> <p>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.”</p>	<p>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.</p>
<p>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.</p>	<p>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</p>

	<p>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.</p>
<p>55. Commenter noted that the proposed rules will improve the system that has disproportionately impaired academic progress of Black and other marginalized students.</p>	<p>Comment noted.</p>
<p>56. Commenter noted, "Pinpointing discipline disproportionality is necessary to help school leaders, community members and community-based organizations (CBOs) make decisions on how to change school cultures that are negatively affecting the educational experiences of our children. Frequently, current data on behaviors leading to suspension are lost because they are coded as 'other' behavior in the OSPI data system. In our work with available OSPI discipline data, we have found the following data quality limitations:</p> <ul style="list-style-type: none"> <li>• Districts with more behavior codes than minimum state requirements must aggregate these codes to 'other' as a behavior type. As a result, a lot of behavior information gets lost as specific categories that do not fit the OSPI categories are coded as 'other.'</li> <li>• The majority (80%) of disciplinary actions from a behavior coded as 'other' under OSPI guidelines result in a short-term suspension. This indicates that most of these behaviors are serious enough to warrant exclusionary discipline, but because of vague coding we are left to guess what behaviors are being considered as problematic."</li> </ul> <p>Commenter recommended that:</p> <p>"1. At the very minimum, any behavior that warrants an out-of-school suspension should include a specific behavior type in the OSPI data system so information reflects what school districts report; [and]</p> <p>2. OSPI and school districts work together to establish a common set of more detailed discipline behavior and intervention categories to provide further disaggregation than currently outlined in items (4)(g) and (4)(h) of RCW 28A.300.042. These new, detailed reporting categories should allow disaggregation of 'other' in both behavior and intervention categories across all types of reportable interventions."</p>	<p>No action taken. OSPI believes the commenter's proposed changes to the rules are not necessary because OSPI added several new state-level behavior reporting categories during the 2013-14, 2014-15, and 2015-16 school years under RCW 28A.300.042, based upon the recommendations of the Student Discipline Task Force established under RCW 28A.600.490. OSPI provides technical assistance to student information system (SIS) vendors and districts to align SIS behavior codes with the appropriate CEDARS behavior codes to reduce the proportion of SIS behavior codes that are uploaded to CEDARS as "Other." (CEDARS is Washington State's statewide longitudinal education data system.) As a result, the statewide Behavior Proportion for the behavior category "Other" and Short-term Suspension has decreased from over 60% in the 2012-13 school year to under 30% in the 2016-17 school year.</p> <p>OSPI does not agree with the commenter's suggestion that school districts are limited to using disaggregated state-level data in order to make decisions at the local level to improve school climate and reduce disparities in student outcomes. Nothing in the final rules prevents school districts from using detailed discipline data collected at the district, building, and classroom level (i.e., office discipline referrals or "ODRs", detentions, and behavior monitoring) to inform potential changes to local policies and practices. OSPI provides technical assistance encouraging districts and schools to collect and review detailed data to contextualize student behavior—including the use of both academic and nonacademic data to inform problem-solving practices.</p>
<p>57. Commenters expressed concerns about the overrepresentation of students of color in schools' use of suspension and expulsion.</p>	<p>Comment noted.</p>

<p>58. Commenter observed the current disproportionality in 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.</p>	<p>Comment noted.</p>
<p>59. Commenter noted that with the passing of HB 1541 (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.</p>	<p>Comment noted.</p>
<p>60. Several commenters noted that in passing HB 1541 in 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.</p>	<p>Comment noted.</p>
<p>61. Commenter noted that the school-to-prison pipeline is a 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.</p> <p>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.</p>	<p>Comment noted.</p>
<p>62. Commenter stated that the Latino community views 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.</p>	<p>Comment noted.</p>
<p>63. Commenter observed that students of color—particularly black and brown students—are</p>	<p>Comment noted.</p>



<p>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.”</p>	
<p>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.</p> <p>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.”</p>	<p>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.”</p>
<p><b>Implementation of rules</b></p>	
<p>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.</p> <p>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.</p>	<p>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.</p> <p>The following rules will become effective on July 1, 2019:</p> <ul style="list-style-type: none"> <li>• WAC 392-400-025 (Definitions)</li> <li>• WAC 392-400-110 (Discipline policies and procedures)</li> <li>• WAC 392-400-430 through 392-400-480 (Suspensions and expulsions)</li> <li>• WAC 392-400-510 through 392-400-530 (Emergency expulsions)</li> </ul> <p>The following rules will remain effective, as amended, for the 2018–19 school year only:</p> <ul style="list-style-type: none"> <li>• WAC 392-400-225 (School district rules defining misconduct—Distribution of rules)</li> <li>• WAC 392-400-230 (Persons authorized to impose discipline, suspension, or expulsion upon students)</li> </ul>

	<ul style="list-style-type: none"> <li>• WAC 392-400-233 (Absences, tardiness, and school meals)</li> <li>• WAC 392-400-235 through 392-400-285 (Discipline, short-term and long-term suspensions, and expulsions)</li> <li>• WAC 392-400-295 through 392-400-305 (Emergency expulsions)</li> <li>• WAC 392-400-310 through 392-400-320 (Long-term suspension and expulsion appeals)</li> <li>• WAC 392-400-410 (Appeal for extension of an expulsion)</li> </ul> <p>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.</p>
<p>66. Commenter expressed concerns about how schools will be able to effectively communicate these rule changes with all staff when they come into effect, while ensuring clarity and consistency in their implementation.</p>	<p>Action taken. See response to 1-A-65.</p>
<p>67. Commenter raised concerns about how the timelines and expectations in the rules will impact school administrators' time. This may result in administrators devoting less time to improving instructional practice, which is key to decreasing discipline issues in the classroom.</p>	<p>No action taken. OSPI believes the final rules fairly balance the new due process and reporting requirements with the need of administrators and educators to implement best practices and alternatives to exclusions.</p>
<p><b>Other general comments</b></p>	
<p>68. Several commenters expressed general support for the proposed rules. Commenters specifically expressed support that the proposed rules:</p> <ul style="list-style-type: none"> <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>	<p>Comment noted.</p>
<p>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.</p>	<p>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.</p>
<p>70. Commenter shared their personal experience as a parent of a student who was suspended multiple times in the third grade. The commenter stated that young students who are constantly suspended experience a hostile</p>	<p>Comment noted.</p>

<p>environment at school and they may continue to get in trouble because they do not want to be in school.</p>	
<p>71. Commenter expressed concerns about their student's 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.</p>	<p>Comment noted.</p>
<p>72. Commenter noted the proposed rules have a lot of similarities to higher education codes of conduct. The student populations are different, so different language and techniques may be appropriate.</p>	<p>Comment noted. OSPI has focused these rules on the discrete needs of Washington K-12 students, parents, educators, and school administrators.</p>
<p>73. Commenter shared their personal experience as a 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."</p> <p>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.</p> <p>The commenter observed that kids are still failing, and OSPI needs to do better.</p>	<p>Comment noted.</p>
<p>74. Commenter shared their personal experience as a foster 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.</p>	<p>Comment noted.</p>
<p>75. Commenter observed that school leaders should be ethical and should be trained in how to approach students with discipline issues.</p>	<p>Comment noted.</p>
<p>76. Commenter expressed concern that vulnerable students' 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</p>	<p>Comment noted.</p>

<p>of lost time in school also hurts students with special needs and students who have experienced trauma disproportionately.</p>	
<p>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.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>Action taken. See response to 1-A-65.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Comment noted. OSPI drafted the rules with substantial stakeholder input from parents and community representatives. See response to 1-A-79.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p> <p>The commenter was also told that, unfortunately, the only recourse the school had was to deny a student an education.</p>	<p>Comment noted.</p>

<p>The commenter said their student cannot comprehend the repercussions of the loss of an education, so this is not an effective punishment.</p> <p>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.</p>	
<p>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.”</p>	<p>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 district-specific policies addressing local problems of inequity in discipline.</p>
<p>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.</p>	<p>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.”</p> <p>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.</p>

<p>85. Commenter noted: "50 Student suicides in our area alone could stop completely if they are treated like customers instead of like criminals."</p>	<p>Comment noted.</p>
<p>86. Commenter expressed concerns about attendance errors, lack of information about curriculum, and schools not meeting Common Core State Standards.</p> <p>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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>88. Commenter expressed concerns that the proposed rules take away rights students possessed under the previous rules.</p>	<p>No action taken. OSPI believes that the substantive and procedural rights of students under the former rules are retained and strengthened.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Comment noted. See response to 1-A-89.</p>
<p>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.</p>	<p>Comment noted. See responses to 1-A-83 and 1-A-65.</p>
<p>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.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>94. Commenter recommended that OSPI continue to provide school districts support through professional</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school</p>

<p>development and additional resources from the state's appropriation.</p>	<p>districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>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 anti-discrimination 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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p> <p>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.</p>	<p>Comment noted. See response to 1-A-83.</p>

<p>99. Commenters expressed support that the proposed rules “(i) repeatedly refer schools to OSPI’s menu of best practices 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).”</p>	<p>Comment noted.</p>
<p>100. Commenters suggested that schools and teachers work to fully understand the reasons behind students’ behavior when responding to students’ behavior, administering discipline, and developing discipline policies and procedures.</p> <p>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.</p> <p>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.”</p> <p>“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.”</p>	<p>Comment noted. See response to 1-A-83.</p>
<p>101. Commenters expressed concerns that the proposed rules would result in additional burdens on teachers and would make it harder for teachers to teach. The education system—and the rules—should be more supportive of teachers.</p>	<p>Comment noted. The final rules are intended to support school districts in adopting evidence-based practices that support students and teachers in classrooms without unnecessarily excluding students from the opportunity to learn.</p>
<p>102. Several commenters expressed concerns that the 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</p>	<p>Comment noted. See response to 1-A-101.</p>



<p>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 choices due to their own issues.”</p>	
<p>103. Commenter suggested schools have an alternate placement for students who are not ready to learn but need additional support emotionally.</p>	<p>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.</p>
<p>104. Commenters expressed concerns about the power imbalance between schools and students and their families.</p>	<p>Comment noted.</p>
<p>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 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.</p> <p>The commenter expressed concern that even though the law is changing, school practice is not changing. OSPI should think of ways to make the rules more meaningful with specific consequences for schools that do not follow them.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.”</p>	<p>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.</p>
<p>107. Commenter recommended the rules identify alternative sources of information so parents have free access to information that allows them to fully participate in the process regarding their child.</p>	<p>No action taken. OSPI believes the commenter’s proposed change is outside the scope of this rulemaking as authorized under RCW 28A.600.015.</p>
<p>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.</p>	<p>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</p>

	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 students who are dependents of the State, the student’s social worker—in addition to the caregiver—be engaged early in addressing school behavior issues, as school discipline can disrupt foster care placements.	No action taken. OSPI believes the commenters’ proposed change is not necessary because WAC 392-400-023, WAC 392-400-025, and WAC 392-172A-01125 provide guardians who are generally 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 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.	Comment noted.
111. Commenter noted that exclusion does not get to the 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.	Comment noted.
112. Commenter expressed support that the rules require that suspensions and expulsions be reported to district superintendents and to OSPI, and that data will be disaggregated.	Comment noted.
113. Commenter noted that the Council of State 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.	Comment noted.
114. Commenter expressed concerns about police presence at school. Commenter suggested that schools, not law enforcement, should deal with students’ nonviolent behavior, which would reduce the school-to-prison pipeline. The high rate of suspension shows that schools have become reliant on juvenile courts and School Resource Officers (SRO). When a school allows an SRO to arrest a student for nonviolent behavior or refer a student to law enforcement or juvenile court as a form of discipline, this discourages the student from appreciating education and creates hardship for the student’s future due to a juvenile record. The commenter recommended that schools report data to OSPI when an SRO has been called to address a student’s behavior. Data should include the student’s demographics,	No action taken. While OSPI agrees that it would be helpful for the agency and other policymakers to better understand how School Resource Officers (SROs) are utilized in student disciplinary matters, 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). In addition, OSPI believes new

<p>reason for incident, and outcome (e.g., student arrested, referred to juvenile detention).</p>	<p>statutory changes or additional agency resources may be necessary to collect data related to SROs.</p>
<p>115. Commenter questioned why data of teachers who discipline students is not being collected. "What lens are they looking through? Maybe those are the ones that need to be fired because they're not doing their job accurately."</p>	<p>Comment noted. OSPI encourages school districts to monitor classroom-based discipline patterns in order to ensure best practices are implemented in buildings.</p>
<p>116. Commenter expressed concerns regarding referrals to alternative schools, particularly for students of color. The rules should require school districts to report to OSPI any student referred to alternative school program, including the student's demographics, reason for referral, and graduation rates. OSPI should track the schools or administrators making these recommendations.</p>	<p>No action taken. OSPI notes that the final rules clarify that suspensions are "a denial of attendance" and expulsions "a denial of admission" that are administered "in response to a behavioral violation". Accordingly, like the prior rules, these rules require school districts to provide notice and process any time a student is referred to an alternative school in response to a behavioral violation. <i>See</i> 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.</p>
<p>117. Commenter provided the following suggestions for integration of the discipline rules with requirements under the Every Student Succeeds Act (ESSA):</p> <p><u>School Report Card</u>          In the community-based report regarding the School Report 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.</p> <p>On the school report card, all schools should report when they call law enforcement, including students' ethnicity/race and subgroup.</p> <p>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.</p> <p><u>Parent Engagement</u></p>	<p>No action taken. OSPI believes the commenter's proposed changes are not necessary because the final rules are consistent with the requirements under ESSA and Washington's ESSA Consolidated Plan, which the United States Department of Education approved on January 16, 2018.</p>

<p>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.</p> <p><u>Needs Assessment</u> 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.</p> <p>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.</p> <p>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.</p>	
<p>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.</p>	<p>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.</p> <p>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.</p>
<p>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.</p>	<p>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.</p>

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

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

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

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

Comment Summary	Response
No comments.	

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

Comment Summary	Response
1. 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 <i>common schools</i> ." (Emphasis added.) Charter schools are not common schools. <i>See League of Women Voters of Wash. v. State</i> , 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 <u>when they may be subject to discipline</u> in Washington school districts."	Action taken. OSPI agrees with the commenter's proposed clarification and added the language to an earlier proposed draft of the rules.
3. Commenters recommended WAC 392-400-020(2)(d) be amended as follows: "WAC 392-172A-05140 through 392-172A-05175, 20 U.S.C. 615, and 34 C.F.R. 300.530 through <u>300.536</u> regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act."	Action taken. OSPI agrees with a portion of the 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
<b>“Classroom exclusion”</b>	
<p>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 “. . . <u>in the case of elementary students, does not exceed the balance of the school day.</u>”</p>	<p>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.</p>
<b>“Cultural Responsive”</b>	
<p>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.</p>	<p>Action taken. See response to 1-A-84.</p>
<p>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.</p>	<p>Comment noted.</p>
<b>“Discipline”</b>	
<p>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</p>	<p>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</p>

Comment Summary	Response
<p>aware of optional, preventive actions, and will assume the practice of removing students to isolated learning environments is the only option to suspension, thus exacerbating the segregation students with developmental disabilities already face.”</p> <p>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 disability or trauma.</p>	<p>school district actions—including exclusionary discipline such as suspensions and expulsions when the student’s presence poses an immediate and continuing danger or threat of material and substantial disruption of the educational process, 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.</p>
<p>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 might interfere with a student’s learning.”</p>	<p>No action taken. See response to 1-E-4.</p>
<p>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.</p>	<p>No action taken. See response to 1-E-4.</p>
<b>“Emergency Expulsion”</b>	
<p>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.</p>	<p>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, pre-deprivation 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.” <i>Goss v. Lopez</i>, 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</p>

Comment Summary	Response
	<p>practicable....”). <i>Id.</i>, 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.</p> <p>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.</p>
<b>“Individual Circumstances”</b>	
<p>8. Commenters recommended adding a definition of “individual circumstances” to be considered when administering student discipline to ensure that schools consider factors that may have contributed to behavior violations and may influence other forms of discipline or strategies to productively reengage the student in school. Commenters recommended adding a standardized list of individual circumstances to reduce subjective or inconsistent consideration of student circumstances that could exacerbate racial disparities.</p>	<p>No action taken. OSPI believes that adding a definition for “individual circumstances” or including a standardized list of individual circumstances would be unduly restrictive and could risk unintentional omissions.</p> <p>OSPI shares the commenter’s concerns that discretionary standards can lead to uneven and potentially disparate application of rules. 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.</p>
<b>“Length of an academic term”</b>	
<p>9. Commenters raised concerns regarding the definition of “length of an academic term” in WAC 392-400-025. Commenters observed that students have been told they are suspended for the balance of the school year because the school district apparently defined “academic term,” for the purposes of an expulsion, as one full school year. Commenters noted that at least one school district has</p>	<p>Action taken. The final rules expressly clarify that “length of an academic term” means “the total number of school days in a single trimester or semester, as defined by the school board.”</p>



Comment Summary	Response
<p>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.</p>	
<b>“Other forms of discipline”</b>	
<p>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.</p>	<p>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.</p>
<p>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.”</p>	<p>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.</p> <p>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 administering long-term suspension or expulsion. See WAC 392-400-440.</p>

Comment Summary	Response
12. Commenter expressed support for the emphasis on other forms of discipline but recommended they be spelled out in more detail in the rules.	No action taken. See response to 1-E-11.
13. Commenter asked whether RCW 28A.165.035 is the correct citation for references to best practices and strategies included in the state menu for behavior. The commenter also asked if the state has a list of best practices regarding behavior interventions or de-escalation strategies.	No action taken. OSPI believes the proposed rules correctly references the state menu for behavior developed under RCW 28A.165.035, which includes “De-Escalation” as a best practice.
14. Commenter stated the term “other forms of discipline” appears to be inconsistent with the procedure for administering classroom exclusions, noting that the classroom exclusion rule requires teachers to first attempt one or more “other forms of discipline” before excluding a student from the classroom.	Action taken. OSPI agrees that the language the commenter cites is inconsistent. Accordingly, WAC 392-400-025 in the final rules does not provide that other forms of discipline include any denial of attendance or classroom exclusion.
<b>“Short-term Suspension”</b>	
15. Commenters recommend redefining short-term suspensions as exclusions up to five (rather than ten) consecutive school days, and long-term suspensions as exclusions of more than five (rather than ten) consecutive days.	No action taken. RCW 28A.600.015(2) expressly provides that short-term suspension procedures “may be used for suspensions of students up to and including, ten consecutive school 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 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.	No action taken. See response to 1-A-83.
2. Several commenters suggested that the rules better clarify the requirements regarding a grievance procedure for “other forms of discipline.” One commenter expressed concerns that the proposed rules would allow a student or parent to grieve any action that results from misconduct, which would be inefficient, unfocused, and micromanage what professional educators do in the classroom every day. Under the proposed rules, the commenter noted that, “a student could grieve when a teacher asks her to ‘be quiet’ during class. And a second-grade student who is asked to behave 14 times throughout the day could . . . initiate 14 separate grievances the next morning.”	No action taken. OSPI disagrees with the commenter’s suggestion that more clarity is necessary with respect to the grievance procedure required under WAC 392-400-110(1)(h). The prior rules required districts to adopt a grievance procedure for “discipline”—which was defined at the former WAC 392-400-205(1) as including all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class

Comment Summary	Response
	<p>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. <i>See WAC 392-400-110(1)(h).</i></p>
<p>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).</p>	<p>No action taken. See response to 1-F-2.</p>
<p>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.</p>	<p>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. <i>See WAC 392-400-110(1)(h).</i> 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.</p>
<p>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.</p>	<p>No action taken. See response to 1-F-4.</p>
<p>6. Commenters recommended WAC 392-400-110(1)(g) be amended as follows: “Establish appeal and review procedures for <u>protecting the due process rights of students</u> and resolving disagreements related to the administration of suspensions, expulsions, and emergency expulsions, consistent with WAC 392-400-430 through 392-400-525.”</p>	<p>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.</p>

Comment Summary	Response
<p>7. Commenters recommended that OSPI clarify the proposed requirement that school districts make "every reasonable attempt" to involve parents in the resolution of student discipline problems. One commenter expressed concerns that a school district will be unsure what actions they must take to take to meet this standard. The commenter noted: "For example, we are not sure if multiple phone calls attempting to reach the parent would meet this requirement, or whether we must also send materials home via U.S. mail. We are also not sure if the District must accommodate a parent's demand that disciplinary meetings can only occur after 7pm (when the parent gets off work). Lack of clarity with such an ambiguous standard would put us in a position where we must defend (in the four appeal procedures) whether two or three phone calls were sufficient."</p>	<p>Action taken. The final rules are intended to be consistent with RCW 28A.600.020(3), which requires districts to adopt discipline procedures providing that teachers and school administrators "make every reasonable attempt to involve the parent or guardian and the student in the resolution of student discipline problems." In response to the commenter's concern, OSPI has revised the rules to clarify what actions school districts must take starting in 2019 to provide increased opportunities for parent participation during an initial hearing with the student. See WAC 392-400-450.</p>
<p>8. Commenter expressed concerns that school district 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.</p>	<p>No action taken. See response to 1-A-48.</p>
<p>9. Commenter expressed appreciation for the inclusion of students, families and community in the discussion on developing and implementing discipline policy.</p>	<p>Comment noted.</p>
<p>10. Commenter expressed appreciation for the proposed rules requiring school districts to develop policies that provide for the early involvement of in resolving discipline problems.</p>	<p>Comment noted.</p>
<p>11. Commenter opposed the development and review 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.</p>	<p>Comment noted.</p>
<p>12. Commenter recommended OSPI further clarify the requirement that a school district must annually provide the district's discipline policies and procedures. The commenter noted that their school district's discipline procedure is 19 pages, and schools can afford to print a copy for every student and employee. The commenter asked whether the policy and procedure could be provided on the school district's website.</p>	<p>No action taken. OSPI believes the commenter's proposed change is not necessary because the final rules do not require districts to print copies of their discipline policies and procedures for every individual, nor do they prevent a district from doing so. The final rules allow districts flexibility to determine how best to disseminate discipline policies and procedures in a manner consistent with the statutory requirement under RCW 28A.320.211(1).</p>

Comment Summary	Response
<p>13. Commenter recommended OSPI clarify what “early involvement of parents” means.</p>	<p>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.</p>
<p>14. Commenters recommended school districts must annually, not periodically, review discipline policies and procedures.</p>	<p>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.</p>
<p>15. Commenter recommended OSPI define “reasonable,” in relation to “every reasonable attempt to involve parents.” How will it be uniform across all school districts?</p>	<p>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.</p> <p>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 others.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>17. Commenter suggested OSPI clarify whether a student who is expelled could ever be readmitted.</p>	<p>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</p>

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

Comment Summary	Response
<p>behavioral expectations” has collective bargaining ramifications for many school districts. Commenter noted that language regarding classroom exclusions is included in many collective bargaining agreements.</p>	<p>teachers first must attempt one or more alternative forms of corrective action before administering a classroom exclusion.</p>
<p>2. Commenter expressed concerns that a classroom 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.</p>	<p>Action taken. See response to 1-E-14.</p>
<p>3. Commenter recommended that the rules more clearly 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.</p>	<p>No action taken. See response to 1-A-6.</p>
<p>4. Commenter shared their personal experience as a parent of a student with disabilities who was often sent home for refusing to listen to teachers’ prompts. The commenter noted these removals were not counted as suspensions, but were documented as “parent requests to be sent home.” The commenter observed the student is no longer connected to school, peers, or the learning environment.</p> <p>The commenter also noted they have no idea how to account for the time their student spent outside the classroom. “There have been days, especially in elementary school, where I would go to pick him up and learned he had been in the principal’s office all day already, and he was being sent home from the principal’s office for acting out in the principal’s office. That was my only notice of in-school suspension.”</p> <p>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.</p>	<p>Comment noted. Starting in the 2018–19 school year, the final rules require school districts to notify a student’s parents regarding classroom exclusion of the student as soon as reasonably possible and in a language the parents understand. The final rules further provide that when a student is 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 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).</p>
<p>5. Commenter stated that a student told them their teacher had an “only English” policy in the classroom, and the teacher had excluded students from class for explaining things to each other in Spanish. The commenter noted it is unclear how this type of removal is documented and what a</p>	<p>Comment noted. Starting in the 2018–19 school year, the final rules require school districts to notify a student’s parents regarding classroom exclusion of the student as soon as reasonably</p>

Comment Summary	Response
<p>student is supposed to do in that circumstance. Commenter also questioned whether it is okay to have an “only English” policy in the classroom.</p>	<p>possible and in a language the parents understand.</p> <p>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.</p>
<p>6. Commenter suggested that the requirement that a 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.</p>	<p>No action taken. See response to 1-B-4.</p>
<p>7. Commenter suggested that classroom exclusions and 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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. Commenters expressed support regarding the proposed 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.”</p>	<p>Comment noted.</p>
<b>Parent Notice</b>	
<p>2. Several commenters expressed support for the requirement in WAC 392-400-335 to notify a student’s parents regarding a classroom exclusion.</p>	<p>Comment noted.</p>
<p>3. Commenter suggested that OSPI clarify whether WAC 392-400-335(4) applies to classroom exclusions under WAC 392-400-330 or to short and long-term suspensions and expulsions under WAC 392-430-480.</p>	<p>Action taken. OSPI agrees with commenters that requirement under proposed WAC 392-400-335(4) for principals to report “classroom exclusions” to school districts' superintendents</p>



Comment Summary	Response
	<p>could be confusing and appear unduly burdensome to school district personnel. OSPI has accordingly stricken this language from the final rule.</p> <p>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.</p>
<p>4. Commenter noted that the timing regarding parent notice in WAC 392-400-335 is ambiguous. The proposed rules require parent notice “as soon as reasonably possible,” but require the principal and teacher confer “as soon as reasonably possible and no later than the start of the following school day.” For consistent, clear, and timely 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.”</p>	<p>Action taken. OSPI agrees that the proposed notice requirements in WAC 392-400-335 appeared to conflict. The final rule therefore provides that notifications of classroom exclusions to principals and parents must be “as soon as reasonably possible.”</p>
<p>5. Commenter recommended that schools notify parents of any and all exclusions from the classroom. Commenter expressed concerns about situations in which schools only notified parents after several exclusions had already occurred.</p>	<p>Action taken. See response to 1-H-4.</p>
<p>6. Commenters suggested that any loss of instruction be treated as exclusionary discipline and be subject to the same types of communication and limitations as suspension.</p>	<p>Action taken. See response to 1-G-2.</p>
<p>7. Commenter recommended that the rules should require school districts to provide more detailed notices regarding classroom exclusions.</p>	<p>Action taken. See response to 1-H-4.</p>
<b>Data</b>	
<p>8. Several commenters expressed concerns that schools use informal exclusions, such as classroom exclusions, requests for parents to pick up their children due to behavior, and informal suspensions. Commenters observed that such informal actions go unreported, which limits efforts to target supports and interventions, undermines efforts to identify and address disproportionate discipline, undercuts student learning, and undermines parent efforts to address incidents using legal mechanisms such as the Individuals with Disabilities Education Act.</p>	<p>Action taken. OSPI agrees with commenters that the rules should provide clearer limitations and reporting requirements for the types of exclusions identified by the commenters. Therefore, starting in the 2018–19 school year, the final rules require school districts to notify a student’s parents regarding classroom exclusion of the student as soon as reasonably possible and in a language the parents understand. The final rules further provide that when a student is 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</p>

Comment Summary	Response
	<p>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).</p> <p>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.</p>
<p>9. Several commenters recommended that OSPI require districts to collect and report data regarding classroom 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.</p>	<p>Action taken. See response to 1-H-3.</p>
<p>10. Commenters recommended that the rules require school administrators to report classroom exclusion to the superintendent.</p>	<p>Action taken. See response to 1-H-3.</p>
<b>Conference Between Teacher and Principal/Designee</b>	
<p>11. Commenter recommended that the rules clarify the means by which the principal or designee and the teachers should confer under WAC 392-400-335. As proposed, it is unclear whether the rules would require that principals and teachers confer face-to-face, by email, or by other means.</p>	<p>Action taken. OSPI agrees with the commenter that the proposed language requiring conferral between the principal and teacher was confusing and difficult to implement. The final rules therefore omit this requirement.</p> <p>The language in the final rules is not inconsistent with the statutory provision under RCW <u>28A.600.020(2)</u> 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.</p>
<p>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 exclusion no later than the start of the following school day does not align with RCW 28A.600.020. Under RCW 28A.600.020(2), a teacher may remove a student “. . . for all</p>	<p>Action taken. See response to 1-H-11.</p>

Comment Summary	Response
<p>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.”</p> <p>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.</p>	
<p>13. Commenters suggested that the proposed WAC 392-400-335 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.</p> <p>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 definition...of discipline no later than the end of the following school day.”</p>	<p>Action taken. See response to 1-H-11.</p>
<p>14. Commenter expressed concerns that if a principal or 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.”</p>	<p>Action taken. See response to 1-H-11.</p>
<b>Classroom Exclusions that Exceed the Balance of the Immediate Subject or Class Period</b>	
<p>15. Several commenters raised concerns regarding the proposed language in WAC 392-400-330(4). Commenters noted that the language is unclear and overbroad—particularly with respect to elementary schools or schools with unique schedules—and may include, for example, a teacher switching subjects after asking a student to sit outside the room for a short period of time to calm down or sending a student out of the classroom for the last five minutes of the class. Commenters noted that such situations</p>	<p>Action taken. OSPI agrees that proposed rules’ initial requirements governing due process related to classroom exclusions were confusing and would likely be difficult to uniformly implement. The final rules therefore provide that when a student is 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</p>

Comment Summary	Response
<p>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.</p>	<p>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).</p> <p>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.</p>
<p>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.</p>	<p>Action taken. See response to 1-H-15.</p>
<p>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.</p>	<p>Action taken. See response to 1-H-15.</p>

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

Comment Summary	Response
<b>Best Practices and Alternatives to Suspension and Expulsion</b>	
<p>1. Several commenters recommended revising the rules to ensure suspension and expulsion are used as a last resort. Commenters encouraged OSPI to require the use of best practices and alternatives to suspension and expulsion. Commenters also recommended that OSPI amend the rules to ensure that other forms of discipline are administered before schools resort to classroom exclusion (WAC 392-400-330), or long-term suspension and expulsion (WAC 392-400-440, 392-400-445). Additionally, commenters recommended that the rules clarify that schools should administer discipline in ways that respond to the holistic needs of the student and support the student in meeting behavioral expectations.</p>	<p>No action taken. OSPI agrees with the commenters that, as provided in WAC 392-400-010(5), school districts should 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. 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</p>

Comment Summary	Response
	<p>in-school suspension. <i>See</i> 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. <i>See</i> WAC 392-400-440.</p> <p>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. <i>See</i> 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.</p>
<p>2. Several commenters supported the use of evidence-based positive and restorative practices and preventative interventions to improve school climate, school safety, and academic achievement for all students, without resorting to suspension and expulsion. Commenters suggested that OSPI provide leadership and clear guidance on the evidence-based alternatives that schools should use to address incidents and support students, teachers, and families in reducing behavior incidents.</p>	<p>Comment noted. 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 “Restorative Justice” is a best practice included in the menu. OSPI updates the menu annually to incorporate new research and resources. 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: <a href="#">Student_Discipline_Training</a>.</p>
<p>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.</p>	<p>No action taken. <i>See</i> responses to 1-I-1 and 1-I-2.</p>

Comment Summary	Response
<p>4. Commenter suggests that students receive in-school interventions to learn appropriate behavior and then return to the classroom.</p>	<p>Comment noted. The final rules allow and encourage such approaches.</p>
<p>5. Commenter shared their personal experience as a 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.</p>	<p>Comment noted.</p>
<p>6. Commenter noted that “any exclusion from class undercuts student learning and connection to school. 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. 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.”</p>	<p>Comment noted.</p>
<p>7. Commenter recommended that the rules require school districts to document the best practices or trauma-informed alternatives that they attempted prior to a suspension or expulsion.</p>	<p>No action taken. OSPI believes that the commenter’s proposed change is not necessary because, beginning in 2019, the final rules require school districts to provide written notice 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. <i>See</i> WAC 392-400-455(2)(c).</p> <p>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.</p>
<p>8. Commenters expressed support for the proposed restrictions on the use of suspension or expulsion for absences or tardiness in WAC 392-400-430.</p>	<p>Comment noted.</p>
<p>9. Commenter stated that school exclusions play no educational purpose. Research shows they play an</p>	<p>No action taken. Consistent with RCW 28A.600.015(2) and <i>Goss v. Lopez</i>, the final rules</p>

Comment Summary	Response
<p>anti-educational purpose as those who are suspended or expelled are much less likely to complete high school than 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.</p> <p>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."</p>	<p>define short-term suspension as up to ten consecutive school days.</p>
<p>10. Commenter expressed support for the use of evidence-based, positive, and restorative systems that can improve 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</p>	<p>Comment noted.</p>
Considering the Student's Individual Circumstances	
<p>11. Commenter recommended revising WAC 392-400-430(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.</p>	<p>No action taken. See response to 1-A-6.</p>
<p>12. Commenter recommends that, under WAC 392-400-330(2), schools take each student's racial, ethnic and cultural background into account when evaluating the student and appropriate consequences.</p>	<p>No action taken. See response to 1-E-8.</p>

<b>Comment Summary</b>	<b>Response</b>
<p>13. Commenter noted that the proposed requirement for 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.</p>	<p>No action taken. See response to 1-E-8.</p>
<p>14. Commenter asked to what extent and end a school district must determine whether a suspension or expulsion, and the length of the exclusion, is warranted. The commenter also asked whether districts should also consider those who were impacted.</p>	<p>Comment noted. For the 2018–19 school year, school districts must continue to consider the nature and circumstances of the violation to determine a suspension and the length of the suspension is warranted in accordance with WAC 392-400-245(1) and WAC 392-400-260(3).</p> <p>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.</p>
<p>15. Commenter expressed appreciation for the considerations in WAC 392-400-430(2), noting that schools may use this opportunity to discuss prevention and ways to support the student.</p>	<p>Comment noted.</p>
<p><b>Returning students to their regular educational setting</b></p>	
<p>16. Commenter noted their school district knows the value of serving differing groups of students in a wide variety of settings, and noted they have several programs that serve students with unique educational, social, and behavioral needs. The commenter also noted their district policy reserves to the district the right to transfer students outside of the geographic attendance area.</p>	<p>Action taken. The final rules are intended to establish uniform minimum due process requirements for student discipline in school districts in accordance with RCW 28A.600.015 and RCW 28A.600.020, which authorize OSPI to prescribe the substantive and procedural due process guarantees of all students in the</p>



Comment Summary	Response
<p>The commenter expressed concern that the proposed rules would severely restrict the school district's ability to administratively transfer struggling students to alternative educational settings that the district determines to be in their (and other students') individual best interests. The proposed rules impose an inappropriate one- size-fits-all approach on districts and students.</p>	<p>common schools of the state. OSPI does not believe these statutes authorize the agency to adopt rules specifically governing a school district's administrative transfer of students unrelated to students' behavioral violations.</p> <p>However, suspensions are "a denial of attendance" and expulsions "a denial of 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. <i>See</i> 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.</p>
<p>17. Commenter observed that traditional programs have failed to provide students with the behavioral and educational services they need, and the school district has moved toward an approach that moves students into alternative programs where they receive more individualized services. The commenter suggested that the proposed rules would force them to revert back to the old system where behavior cycles repeat themselves, and it removes the school district's ability to place students in an individualized program. "When a student has repeated behavioral issues in a standard traditional classroom environment, it is fundamentally unfair to expect the student to somehow succeed in that same environment the moment their suspension is over."</p>	<p>Comment noted.</p>
<p>18. Commenter supported the Legislature's approach to ensuring students receive educational services while suspended or expelled. However, the commenter opposed OSPI's assumption that the student must continue to receive educational services in their previous regular educational (i.e., neighborhood school) setting after the suspension/expulsion has been completed. "Our experience is that alternative programs before, during, and/or after suspensions and expulsions are crucial to supporting students. OSPI should be providing as much support and incentive as possible to help districts in that regard."</p>	<p>Comment noted.</p>
<p>19. Commenter stated that the proposed WAC 392-400-430(3)(b) will be invalid because it changes Legislative enactments regarding the return of a student to their regular</p>	<p>Action taken. OSPI disagrees with the commenter's interpretation of RCW 28A.600.020(7). That statute concerns the</p>

Comment Summary	Response
<p>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.”</p>	<p>provision of educational services during a <i>suspension or expulsion</i> 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.</p> <p>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. <i>See</i> RCW 28A.600.015(5), (8).</p> <p>From this, it is clear that the act of transferring a student to another school <i>in response to a behavioral violation</i> 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.</p> <p>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 Resource Guide for Improving School Climate and 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).</p> <p>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</p>

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.
<b>Other</b>	
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.
23. Commenters expressed support for WAC 392-400-430(7), which prohibits school districts from suspending or expelling a student for absences or tardiness.	Comment noted.
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.	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.

Comment Summary	Response
<p>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.”</p>	<p>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.”</p> <p>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.</p>

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

Comment Summary	Response
<p>1. Commenter expressed concern that where the 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.”</p>	<p>Comment noted.</p>
<p>2. Commenter expressed support for the proposed limitations on suspensions for students in kindergarten through fourth grade.</p>	<p>Comment noted.</p>
<p>3. Commenter stated that limiting the number of short-term suspensions or in-school suspensions for students in grades K–4 contradicts the law. The commenter noted that the Legislature expressly allows a school to suspend or expel without limitation on the number of days. Also, the limitation limits a teacher’s authority to take disciplinary action to correct a student who interferes with an orderly educational process.</p>	<p>Comment noted. OSPI disagrees with the commenter’s contention that OSPI has no legal authority to place limitations on suspensions for students in grades K–4. In accordance with the agency’s rulemaking authority under RCW 28A.600.015(1) to establish rules that prescribe the substantive and procedural due process rights of students served by school districts, OSPI</p>

Comment Summary	Response
	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p> <p>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 parents) do not believe he is safe in the same school as the fourth grader?</p> <p>Must the kindergartner be forced to move to a different school? That does not make sense to us.”</p>	<p>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.</p> <p>To begin, many of the concerns the commenter raises with respect to the final rules applied equally to the prior rules: The final rules’ grade-level restriction on cumulative short-term suspensions days is no different from the prior rules’. Likewise, the prior rules—like the final 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 significant.</p> <p>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</p>

Comment Summary	Response
	<p>manage or reduce any threat posed by young students.</p> <p>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.</p>
<p>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.</p>	<p>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.”</p> <p>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.</p>
<p>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.</p>	<p>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.”</p>
<p>8. Commenter expressed support for adding the in-school suspension provision in WAC 392-400-435(4).</p>	<p>Comment noted.</p>
<p>9. Commenter asked if expulsion is the option for a student who need to be suspended for beyond ten cumulative school days.</p>	<p>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</p>

Comment Summary	Response
	or expulsion for any behavioral violation “and should first consider alternative actions.”
<p>10. Commenter suggested the language in the rules is not 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?</p>	<p>No action taken. See response to 1-I-2.</p>
<p>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.</p>	<p>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.</p> <p>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.</p>

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

Comment Summary	Response
<p>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.</p>	<p>Comment noted.</p>
<p>2. Commenter recommended school districts be 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.</p>	<p>No action taken. See response to 1-I-2.</p>
<p>3. Commenter stated that excluding students in grades K-4 from long-term suspension and expulsion is contrary to law, noting that the Legislature allows school districts to</p>	<p>Comment noted. See response to 1-J-3.</p>

Comment Summary	Response
<p>long-term suspend any student for any of the reasons listed in RCW 28A.600.015(6).</p>	
<p>4. Commenter noted that while limiting long-term 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.</p>	<p>No action taken. See response to 1-J-4.</p>
<p>5. Commenter expressed concern that the new limit on long-term suspensions and expulsions (students must pose an imminent danger to others or imminent threat of substantial disruption to the educational process) will not allow school districts to long-term suspend students for several offenses that they thought the Legislature had allowed. “Under OSPI’s rules, could we long term suspend a high-school student caught smoking marijuana alone during lunch. We would not be able to show imminent danger to other students. And, how exactly do we show imminent threat of substantial disruption to the educational process? The Legislature would allow us to long-term suspend/expel a student in such a situation regardless whether we could show imminent danger to others or imminent threat of substantial disruption”</p> <p>Commenter also expressed concern that they should have to show the students would be an imminent threat to other’s safety, or imminent disruption to the educational process for the entire length of the suspension. “if a student assaults another student and the District wants to impose a twenty-day suspension, the District could not do so unless it concludes that the student would pose an imminent threat if he or she is returned on day 4 (or 7, or 15) of the suspension.” The commenter noted it would be seemingly impossible for a school district to defend such a conclusion during the appeal process.</p>	<p>Comment noted. The final rules are consistent with RCW 28A.600.015(6), which provides that school districts may consider using long-term suspension or expulsion in response to behavioral violations under subsections (6)(a) through (d), and RCW 28A.600.015(7) which provides that with the exception of firearms violations “school districts are not required to impose long-term suspension or expulsion for behavior that constitutes a violation or offense listed under subsection (6)(a) through (d) of this section and should first consider alternative actions.”</p> <p>In accordance with the intent section of HB 1541 (2016) regarding reducing “the length of time students of color are excluded from school due to suspension and expulsion” and OSPI’s statutory authority under RCW 28A.600.015(1), the final rules provide that the length of a long-term suspension must be determined based on whether the student would pose an imminent danger or imminent threat should the student return to school before the proposed end date of the exclusion. A determination under this standard concerns an emergency situation that 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.”</p> <p>OSPI believes this standard protects students from unwarranted exclusions that are unrelated to adequately ensuring a safe and supportive learning environment for all students.</p>



Comment Summary	Response
	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.
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.	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.

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 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. OSPI believes the proffered language is not necessary.

**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
<p>1. Several commenters expressed support that proposed WAC 392-400-450 encourages early communication with parents about the student’s behavior and discipline issues.</p>	<p>Comment noted.</p>
<p>2. Several commenters recommended revising the rules to encourage or require parent communication or participation.</p> <p>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.</p>	<p>Action taken. See response to 1-A-30.</p>
<p>3. Commenter noted that the addition of “an opportunity 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.</p>	<p>Comment noted.</p>
<p>4. Commenter suggested a sort of Miranda Rights process should be afforded to students accused of misbehavior warranting suspension or expulsion, as they are afforded to all persons in the U.S. accused of civil and criminal wrongdoings. “The accused should be apprised of their rights and be afforded access to their parents and legal representation at all hearings. The accused should be able to confront their accuser(s) and to respond to the accusations.”</p>	<p>No action taken. Consistent with <i>Goss v. Lopez</i> 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. And the school district must provide the student an opportunity to share their perspective and provide explanation. See WAC 392-400-450.</p> <p>The final rules further provide increased opportunities for parent participation in the initial hearing.</p> <p>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.</p> <p>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</p>

Comment Summary	Response
	<p>final rules precludes a school district from adopting policies and procedures setting forth expectations that provide additional procedural protections for students.</p>
<p>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 provision of due process prior to the deprivation is 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 removal.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p> <p>Consistent with <i>Goss v. Lopez</i> 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.</p> <p>The rules provide increased opportunities for parent participation during an initial hearing with the student.</p> <p>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.</p> <p>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</p>

Comment Summary	Response
	expectations that provide additional procedural protections for students.
<p>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.</p> <p>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) 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.</p>	<p>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.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>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.</p>
<p>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.”</p>	<p>Action taken. See response to 1-M-6.</p>
<p>10. Commenter recommended that parents’ perspectives, as well as the student’s health and well-being, be at the</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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.”</p>	
<p>11. Commenter stated that it is a fiction to propose that a 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.</p> <p>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.</p>	<p>Action taken. See response to 1-M-6.</p>
<p>12. Commenter expressed concern that a student with 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.</p>	<p>Action taken. See response to 1-M-6.</p>

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

Comment Summary	Response
<p>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.</p>	<p>Action taken. See response to 1-M-6.</p>
<p>2. Commenter recommended that parent notification must be sent by certified letter, not by email.</p>	<p>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.</p>
<p>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,</p>	<p>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</p>

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. <i>See</i> 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 under Title VI of the Civil Rights Act of 1964.
7. Commenter recommended OSPI clarify how a person, school, or district document that a parent received a written notice.	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.

Comment Summary	Response
<p>9. Commenter recommended OSPI provide templates or more specific requirements for parent notices.</p>	<p>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 they meet the minimum requirements of these rules.</p>

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

Comment Summary	Response
<p>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.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>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.</p>	<p>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.</p> <p>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.</p>
<p>3. Commenter suggested OSPI clarify whether the optional conference is recorded or documented in such a way that it would stand up in court.</p>	<p>No action taken. See response to 1-O-2.</p>



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

Comment Summary	Response
<p>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).</p> <p>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.</p> <p>(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.”</p>	<p>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.</p> <p>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. <i>Goss v. Lopez</i>, 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.” <i>Id.</i> OSPI believes that the minimum due process procedures set forth in the final rules adequately protect this important right.</p> <p>For these reasons, OSPI declines to adopt the commenter’s suggested language.</p>
<p>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.</p> <p>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.</p> <p>(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</p>	<p>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.</p> <p>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</p>

Comment Summary	Response
<p>which the suspension will begin and end; and (iii) That the student has an opportunity to access educational services.</p> <p>(c) No right to review. The superintendent’s or designee’s decision is not subject to review under WAC 392-400-470.”</p>	<p>and parents may be represented by counsel, question witnesses, share their perspective and explain the behavioral violation, and introduce evidence. WAC 392-400-465(4).</p> <p>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.</p> <p>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.</p>
<p>3. Commenter suggested that the first level of appeal be to 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.</p>	<p>No action taken. See response to 1-P-2.</p>
<p>4. Commenters raised concern that a student who is removed from class for one period may appeal the teacher’s decision all the way to the superintendent.</p>	<p>Comments noted. Under the final rules, students who are removed from class for a single period and remain at school are deemed to have been 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.</p> <p>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.</p>
<p>5. Commenter observed that the appeal procedures are too 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.”</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>6. Commenter recommended OSPI develop one due process, appeal, and grievance procedure for all levels of discipline rather than having a unique procedure for each category of misconduct.</p>	<p>No action taken. Consistent with OSPI’s statutory authority under RCW 28A.600.015(1), OSPI believes different discipline actions require different procedural requirements that vary in formality to adequately protect the interest of students. In accordance with <i>Goss v. Lopez</i> 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.</p> <p>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.</p>
<p>7. Commenter recommended that appeals for short-term suspension be informal, noting that a one-day suspension will be served before any appeal process. Administrators could easily become overwhelmed by appeals.</p>	<p>No action taken. OSPI believes the commenter’s proposed change is not necessary. While it is true that, beginning in 2019, students may elect to 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.</p> <p>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</p>

Comment Summary	Response
	<p>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.</p>
<p>8. Commenter observed that the multiple levels of appeals 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.</p>	<p>No action taken. See response to 1-P-2.</p>
<p>9. Commenter observed the appeal process is unnecessary. 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.</p> <p>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.</p>	<p>Action taken. See response to 1-P-1.</p>
<p>10. Commenters recommended the rules provide for automatic appeals on all long-term suspensions and expulsions, with community-based advocacy support available to the student and parents.</p>	<p>No action taken. OSPI declines to adopt the commenter's proposed change. RCW 28A.600.015(1) 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 believes that allowing for an appeal to occur at any time during a suspension or expulsion would be impractical considering this statutory provision.</p> <p>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.</p> <p>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.</p>
<p>11. Commenter expressed support for the extended time frame for appealing a suspension or expulsion. However, the commenter suggested OSPI make the appeal available</p>	<p>Action taken. For the reasons identified in 10 above, OSPI declines to adopt changes to the rules that provide parents and students a right to</p>

Comment Summary	Response
<p>throughout the entire suspension, noting that many families do not have the resources to appeal within a short amount of time. The commenter also stated that school enrollment is a civil right, so exclusions carry due process rights to appeal.</p> <p>The commenter also noted that schools and families need skilled mediators and counselors to help resolve differences.</p>	<p>appeal during the entire period of a suspension or expulsion.</p> <p>However, OSPI agrees with the commenter that it can be challenging for families to perfect appeals of disciplinary actions within short time 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. <i>See</i> 392-400-465(2).</p>
<p>12. Commenter observed a lack of consistency in the proposed appeal timelines. The commenter recommended the time frame for each level of appeal be five days to allow enough time to make arrangements.</p>	<p>No action taken. OSPI disagrees with the commenter’s suggestion that final rules lack consistency regarding appeal timelines. The 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.</p> <p>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 from the student and parents.</p>
<p>13. Commenters noted that five days to appeal is not enough. The commenters observed that a school district generally has twenty days to respond when a parent makes a request. This should be equal.</p>	<p>Comment noted. See response to 1-P-12.</p>
<p>14. Commenter noted they would, out of courtesy, provide a witness list to the district before an appeal hearing, and they would receive no list in return from the school.</p>	<p>Comment noted.</p>
<p>15. Commenter expressed concern that the names of witnesses who do not testify at an appeal hearing will be included on the witness list. The commenter recommended their names be removed from the witness list.</p>	<p>Comment noted. Under WAC 392-400-465(e), 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-</p>

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, <u>and the contact information for the person who will coordinate scheduling of the reengagement meeting.</u> ”	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 absolute right to speak to school board.	No action taken. OSPI does not agree that the 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 health or safety” justifying an extension of expulsion to include only situations posing a threat of physical injury to other students or school personnel.	No action taken. See response to 1-L-2.
2. Commenter noted that the petition to extend an expulsion does not apply to firearm violations.	Comment noted. WAC 392-400-480 of the final 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 revised to “length of <u>an additional</u> academic term.”	No action taken. OSPI does not believe the recommended change is necessary and believes the language in the final rules is sufficient.
4. Commenters recommended WAC 392-400-480 be amended to add the following: “Appeal. If the petition is granted, within ten school business days of the receipt of the decision, the student or parents may appeal the decision to the district’s school board.”	Action taken. OSPI agrees with the commenters that students and parents should have some appeal rights in the event a district superintendent grants a petition to extend an 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 when an emergency expulsion is not converted into a suspension or expulsion. They noted that their school district records these removals as “non-suspension excused absences.”	No action taken. OSPI believes this change is not necessary because, in accordance with RCW 28A.300.042, business rules and reporting guidance for OSPI’s statewide longitudinal education data system, CEDARS, already require

Comment Summary	Response
	<p>the reporting of emergency expulsions that end without being converted.</p> <p>OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>5. Commenter observed that “disruption of the educational 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.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>6. Commenter recommended emergency expulsions be limited to threats of physical injury, noting that “disruption of the educational process” is too vague.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>7. Commenter shared their personal experience as a parent 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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. 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.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>2. Commenter recommended OSPI clarify that educational services for an emergency expulsion would be the same as a short-term suspension.</p>	<p>No action taken. OSPI believes the commenter’s proposed change is not necessary because WAC 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.</p>



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

Comment Summary	Response
<p>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 392-400-525) may be confusing, including how it might impact when the appeal hearing would occur.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>

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

Comment Summary	Response
<p>1. Commenter expressed concerns regarding proposed WAC 392-400-525(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).</p>	<p>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.</p>
<p>2. Commenter asked whether “official(s) presiding over the appeal may be district staff rather than a hearing officer. “Perhaps our ombudsman?”</p>	<p>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).</p>

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>1. Commenters recommended OSPI provide more definitions around educational services and school personnel.</p>	<p>No action taken. OSPI declines to adopt the commenter’s proposal. The final rules are 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</p>

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 an appeal process to enforce this new section if a district is not able to provide services or fails to follow through.	Comment noted. The final rules do not provide a specific appeal process for cases where a school district fails to provide suspended or expelled 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.
4. Commenter noted that ensuring basic educational 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.	Comment noted.
5. Commenter noted that it is not appropriate to expect 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.	Comment noted.
6. Commenter suggested OSPI recommend in-school suspension as a best practice for providing educational services during suspension.	No action taken. OSPI believes it is not necessary to include this proposal in the final rules because 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 an alternative setting for students to access.	Comment noted.
8. Several commenters recommended that the requirement 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	No action taken. See response to 1-Y-1.

Comment Summary	Response
<p>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.</p> <p>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.</p>	
<p>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.</p>	<p>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.</p> <p>To that end, the final rules provide that, as soon as 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. <i>See WAC 392-400-610(2).</i></p> <p>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. <i>See WAC 392-400-610(6).</i></p>
<p>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.</p>	<p>Action taken. <i>See 1-Y-9.</i></p>
<p>11. Commenter noted that one size does not fit all. Any given situation calls for professional judgement.</p>	<p>Comment noted.</p>
<p>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.</p> <p>The commenter also expressed skepticism that providing educational services to students with disabilities when</p>	<p>No action taken. <i>See response to 1-A-53.</i></p>

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 should provide (not simply consider) equivalent services and necessary technology or transportation to ensure that students can equitably participate in education services.	No action taken. See response to 1-Y-1.
14. Commenter asked if a school district must use the BECCA or truancy process if a student denies educational services, noting that the proposed WAC requires a school district to provide educational services.	<p>Comment noted. Under recently enacted OSPI rules governing student absences, chapter 392-401 WAC, student absences due to suspensions, 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).</p> <p>Students with excused absences are not deemed truant for purposes of the state’s compulsory education laws.</p>
15. Commenters recommended the considerations in WAC 392-400-610(2) be requirements instead of considerations.	No action taken. See response to 1-Y-1.
16. Commenters recommended WAC 392-400-610(2) be amended to add the following: “Consider academic and nonacademic supports that aid in the student’s academic success and keep the student engaged and on track to graduate.”	No action taken. See response to 1-Y-1.
17. Commenters recommended WAC 392-400-610(3) be amended as follows: “As soon as reasonably possible, <u>but no later than two school business days</u> , after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide.”	No action taken. OSPI agrees with the commenters that 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. 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 normally excluded from all district property, including buses. If schools have to use cabs to provide transportation for students, that would be a huge new unfunded mandate.	Comment noted. OSPI amended WAC 392-121-108 in 2016 to remove suspensions and expulsions from the list of enrollment exclusions 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
<p>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.</p>	<p>No action taken. See response to 1-Y-1.</p>
<p>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."</p>	<p>No action taken. See response to 1-Y-1.</p> <p>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 (<i>see, e.g.</i>, 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.</p>
<p>21. Commenter noted that is inadequate that students with disabilities who are sent home receive only two hours of instruction each week.</p>	<p>Comment noted.</p>
<p>22. Commenter recommended the following language 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."</p>	<p>No action taken. OSPI disagrees with the 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.</p> <p>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.</p>

<b>“Comparable, equitable, and appropriate”</b>	
<b>Comment Summary</b>	<b>Response</b>
<p>23. Commenter recommended OSPI clarify or define “comparable, equitable, and appropriate.”</p>	<p>Action taken. OSPI believes that the commenter’s 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).</p> <p>This change is intended to establish clear and uniform statewide standards governing the minimum substantive requirements for delivering 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 opportunity to continue to learn and make progress toward graduation.</p> <p>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.</p> <p>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.</p>
<p>24. Commenter stated that the proposed WAC 392-400-610 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.</p>	<p>Action taken. See response to 1-Y-23.</p>

Comment Summary	Response
<p>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.”</p>	
<p>25. Commenter stated that the proposed WAC 392-400-610 will be invalid because it changes Legislative enactments 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.</p>	<p>Action taken. See response to 1-Y-23.</p>
<p>26. Several commenters proposed “comparable” be 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.</p>	<p>Action taken. See response to 1-Y-23.</p>
<p>27. Commenter asked the following regarding “comparable, 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!”</p>	<p>Action taken. See response to 1-Y-23.</p>
<p>28. Commenter noted the Legislature does not require that educational services provided during suspensions be comparable, equitable, and appropriate.</p>	<p>Action taken. See response to 1-Y-23.</p>
<p>29. Commenter noted that “comparable educational services” sounds an awful lot like “basic educational services.” The commenter suggested OSPI is now saying that a district must provide basic educational services to a student even though it just suspended a student from basic educational services, and this does not make sense.</p> <p>“It is not clear whether, for example, a student who has a third- semester Japanese language class when they are suspended must be allowed to enroll in the same class at a</p>	<p>Action taken. See response to 1-Y-23.</p> <p>OSPI notes that 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), and cannot be interpreted as the act of excluding a student from access to a basic program of education. On the contrary, state law explicitly bars school districts from suspending</p>

Comment Summary	Response
<p>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)."</p> <p>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.</p> <p>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.</p>	<p>the provision of educational services to a student as a disciplinary action. See RCW 28A.600.015(5), (8).</p> <p>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).</p>
<p>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.</p>	<p>Action taken. See response to 1-Y-23.</p> <p>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.</p>
<b>Educational services for short-term suspensions</b>	
<p>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</p>	<p>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</p>



Comment Summary	Response
<p>and the student will require the Prototypical School Funding Formula to include a new role. This shift of responsibility from the student in the present system to a staff member in the new system to get assignments from the teacher and return them to the teacher is an expensive shift.</p>	<p>state apportionment for students when they are enrolled in a course of study providing educational services during a suspension or expulsion. Additional supplemental state and federal funding, too, is available.</p> <p>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.</p>
<p>32. Commenter asked how a school district can provide access to a teacher when a student has demonstrated behavior in a way that would inhibit a teacher from providing such access. “If a student threatened the only calculus teacher and that teacher is the one who is expected to provide access to the content, how does this work? Could the access be via email? Phone? Internet platform? When would this contact occur? During the day, before the day, after the school day?”</p>	<p>Comment noted. WAC 392-400-610(3) and (4) do not require in-person contact between school personnel and suspended or expelled students. The methodology districts use to provide the coordination required under these sections is left to the discretion of local school personnel.</p>
<p>33. Commenter asked whether “access to school personnel” means a school would pay a teacher or paraeducator extra 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.</p>	<p>Comment noted. See response to 1-Y-31.</p>
<p>34. Commenter recommended OSPI make it clear that access to school personnel during a suspension or expulsion could be accomplished via telephone or email. If a student is 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.</p> <p>The commenter recommended the following language: “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.”</p>	<p>No action taken. OSPI does not believe the commenter’s proposed language is necessary. See response to 1-Y-32.</p> <p>OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>35. Commenter opposed the requirement in WAC 392-400-610(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</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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.</p>	
<b>Educational services for long-term suspensions and expulsions</b>	
<p>36. Commenter noted that the Student Discipline Task Force worked hard on developing language regarding educational services, but they noted that it was never intended for families to be required to place students in ALE. There should be flexibility. ALE plan is a good guide, but it should not disrupt a student's educational program.</p>	<p>Comment noted. The final rules do not require school districts to place students in an alternative learning experience (ALE). The final rules allow school districts flexibility to provide students educational services under any of the courses of study under WAC 392-121-107, which includes ALE as one option.</p>
<p>37. Commenter asked whether a student may be enrolled in an ALE school when they have been suspended or expelled. "I have an ALE school in my district that is state-approved and offers a Washington High School Diploma. The certified teacher meets with the student a minimum of one hour per week while the student does 30 hours of learning per week. The ALE school's teacher does not meet as many hours per week as in the district's regular state-approved school."</p>	<p>Comment noted. The final rules allow school districts flexibility to provide students educational services under any of the courses of study under WAC 392-121-107, which includes alternative learning experience (ALE) as one option.</p>
<p>38. Commenters recommended WAC 392-400-610(6) be 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."</p>	<p>No action taken. See response to 1-Y-1.</p>

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

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

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

Comment Summary	Response
<p>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.</p>	
<p>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 re-engagement.”</p> <p>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.”</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>11. Commenters recommended that, in developing a reengagement plan, a school district must consider the educational services the student received during the exclusion.”</p>	<p>No action taken. OSPI believes the commenters’ recommendation is not necessary because WAC 392-400-710(2)(d) addresses their concern.</p>
<p>12. Commenter noted the reengagement plan should be a working document, not a checkbox. Reengagement plans should be individualized.</p>	<p>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.</p>

Comment Summary	Response
<p>13. One commenter noted that a reengagement meeting after a long-term suspension should be mandatory and not optional. Without this planning process, the student's successful return to the classroom is diminished.</p>	<p>No action taken. In accordance with RCW 28A.600.022, the final rules require school districts to convene a reengagement meeting with the student and parents to discuss a plan to reengage the student following any long-term suspension or expulsion.</p>
<p>14. Commenters noted that family members and other advocates should be allowed to participate in the reengagement meeting, and written notice of the long-term suspension or expulsion include notice of this right.</p>	<p>No action taken. OSPI does not believe the commenter's proposed change is necessary because RCW 28A.600.022(1) provides that "[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 the student's cultural and family norms.</p>
<p>15. Commenters noted that teachers should also be involved in the reengagement process so building administrators can determine supports the teacher and the student may need before returning to school.</p>	<p>Comment noted. Nothing in the final rules precludes a school district from involving teachers in a reengagement process. When developing a reengagement plan, the final rules 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. <i>See</i> WAC 392-400-710(2)(e).</p>
<p>16. Commenters expressed concern that a student returning to school may encounter embarrassment or teasing. They recommend OSPI develop sample plans for small-group counseling that can be used to reengage students.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>17. Commenter noted the reengagement process should also focus on teachers' behavior and what support teachers need to be successful in their interactions with the student.</p>	<p>No action taken. OSPI believes the commenter's proposed change is not necessary because WAC 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.</p>
<p>18. Commenter recommended the rules clarify that the reentry conference or any terms imposed by the reentry conference do not delay beyond the terms of the suspension.</p>	<p>No action taken. Reengagement plans are intended to support the student in successfully returning to school following a long-term 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.</p>

Comment Summary	Response
19. Commenters recommended WAC 392-400-710(5) be amended to add the following: “Reengagement meetings supplement, but do not replace, any meetings or evaluations 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.”	No action taken. OSPI believes the commenter’s proposed language is unnecessary because it is addressed adequately in WAC 392-400-020(2).

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

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

Comment Summary	Response
<p>decision of admittance rest with the district that the student would like to transfer to. In the appeal process outlined in [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.”</p>	<p>parents, and advocates in implementing the rules.</p>
<p>3. Commenter noted that their school district’s online 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.</p>	<p>Comment noted. See response to 1-BB-2.</p>
<p>4. Commenter recommended OSPI clarify whether a student who moves into a new school district may enter school even though they are suspended or expelled in another school district.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>5. Commenter asked why the proposed rule would allow a 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.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>6. Comment stated WAC 392-400-810(1) lacks common 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.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>7. Commenters recommended WAC 392-400-810 be 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.”</p>	<p>Action taken. See response to 1-BB-2.</p>

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

Comment Summary	Response
<p>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.</p>	<p>Comment noted.</p>
<p>2. Commenters recommended revising WAC 392-400-815 to ensure that behavior agreements comply with due process, and contain conditions that support schools and students in addressing behavioral incidents. WAC 392-400-815 should be revised to:</p> <ul style="list-style-type: none"> <li>• Require that conditions in behavior agreements be rationally related to the behavioral violation that gave rise to the agreement;</li> <li>• Require that behavior agreements incorporate evidence-based strategies;</li> <li>• Limit behavior agreements to an academic term; and</li> <li>• Ensure that students have the full panoply of due process protections if they are suspended or expelled due to a violation of a behavior agreement.</li> </ul>	<p>No action taken. OSPI believes the commenters' proposed language is not necessary. First, behavior agreements must be in response to specific behavioral violations under WAC 392-400-815(1), and, OSPI believes, must therefore rationally relate to the violation. Second, WAC 392-400-815 must be construed in a manner consistent with, among other things, RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior. See WAC 392-400-020(2)(e). Accordingly, OSPI would expect that school districts would consider evidence-based behavioral intervention strategies, where appropriate, when entering 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.</p>
<p>3. Commenter noted that collaborative behavior agreements are more likely to lead to success. Commenter recommended that parents and guardians participate in creating behavior agreements and that schools provide the agreement in the parents' and student's native language. Commenter recommended that districts report—and OSPI track—how many behavior agreements are implemented and their outcome.</p>	<p>Action taken. OSPI agrees with the commenter that limited-English proficiency parents should not have barriers to entering into behavior agreements under WAC 392-400-815. Accordingly, the final rules provide at WAC 392-400-815(6) that school districts must ensure that any behavior agreement under this section is provided in a language the parents and student understand.</p> <p>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</p>



Comment Summary	Response
	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).
4. Commenter noted that a policy and procedure regarding behavior contracts would be vague because each behavior contract would be written differently.	Comment noted. The purpose of the district policies and procedures under WAC 392-400-815(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
<p>1. Several commenters expressed concern that the language in WAC 392-400-825 is inconsistent with Washington’s law on restraint and isolation. Commenters encouraged OSPI to remove the term “maintain order” from WAC 392-400-825 to maintain consistency between this section and the statute on restraint and isolation.</p> <p>Commenters noted that the proposed rule prohibits the use of corporal punishment, but excludes from that definition “reasonable physical force by [school staff] as necessary to maintain order . . . .” Yet, RCW 28.600.485 defines “restraint” as any physical intervention or force used to control a student, and prohibits the use of restraint only as necessary to control spontaneous behavior that poses an imminent likelihood of serious harm. This is a significantly higher standard than force used to “maintain order.” While WAC 392-400-825(4) references restraint and isolation, the chapter does not explain the connection between “reasonable physical force” and “restraint,” and may give the misleading impression that physical force can be used to “maintain order” even when there is no imminent likelihood of serious harm. Commenters suggested that this may increase the use of physical restraint on students with disabilities.</p>	<p>No action taken. WAC 392-400-825(1) generally bars school districts from administering corporal punishment—that is, any act that willfully inflicts or willfully causes the infliction of physical pain on a student. The rule goes on spell out a handful of exceptions to this rule. One of these, WAC 392-400-825(1)(a), provides that the prohibition on corporal punishments does not apply when district personnel needs to maintain order or to prevent a student from harming themselves, other students, school personnel, or property.</p> <p>Separately, WAC 392-400-825(2) provides that school districts may not use restraint, isolation, or a restraint device on students, except where otherwise authorized by statute. Restraint and isolation are not the same thing as corporal punishment under the rule. Accordingly, the exceptions to the prohibition on corporal punishment provided in WAC 392-400-825(1) are not intended to apply to restraint or isolation.</p> <p>Because the final rules do not allow school personnel to use restraint or isolation to maintain order, OSPI believes the commenters’ proposed change is not necessary.</p>
2. A commenter noted that regulations regarding corporal punishment, restraint, and isolation promote negative behaviors because students know they cannot be touched.	Commented noted.

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

**2-A. General Comments**

Comment Summary	Response
<b>School Safety and Educational Environment</b>	
Comment Summary	Response
<p>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.</p>	<p>Action taken. See response to 1-A-2.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p> <p>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.</p> <p>They observed that students who prevent other students 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.</p>	<p>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 392-400-480), 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.</p> <p>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).</p> <p>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.</p>

Comment Summary	Response
<p>4. Commenter shared their personal experience of being 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.</p>	<p>Comment noted.</p>
<p>5. Commenter shared their personal experience of being 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.</p>	<p>No action taken. See response to 2-A-3.</p>
<p>6. Commenter shared their personal experience as a 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.</p>	<p>Action taken. See response to 1-A-2.</p>
<p>7. Commenter shared their personal experience of 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.</p> <p>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.</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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.</p> <p>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.”</p>	<p>Comment noted. See response to 2-A-3.</p>
<p>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.</p>	<p>Comment noted.</p>
<p>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.</p> <p>The commenter suggested unpredictable students be removed from class and school as long as needed, without any limits.</p>	<p>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.</p>
<p>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.”</p>	<p>Comment noted.</p>

<b>Students with Disabilities</b>	
<p>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.</p> <p>The commenter expressed appreciation to legislators and educators who have advocated for comprehensive and equitable discipline policies, including Senate Bill 5155, which focuses on suspensions for young children.</p>	<p>Comment noted.</p>
<b>Comment Summary</b>	<b>Response</b>
<p>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.</p>	
<p>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.</p> <p>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.</p> <p>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.</p>	<p>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.</p> <p>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).</p> <p>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.</p>

Comment Summary	Response
	<p>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: <a href="#">Student_Discipline_Training</a></p> <p>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.</p>
<p>14. Commenter noted that their school district is working 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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>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.</p>

Comment Summary	Response
<p>16. Several commenters recommended OSPI open 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.</p>	<p>Comment noted.</p>
<p>17. Commenter shared their personal experience of being a 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.</p>	<p>Comment noted.</p>
<p>18. Commenter shared a quote from the Washington State 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."</p>	<p>Comment noted.</p>
<p>19. Commenter recommended OSPI create separate rules regarding suspensions for students with disabilities and behavioral disorders, and these rules should be specifically connected to students' individual circumstances.</p>	<p>Comment noted. These final rules establish minimum substantive and procedural due process rights of all students when they may be subject to 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.</p>



Comment Summary	Response
<p>20. Commenter questioned why special education rules 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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>No action taken. See response to 1-A-6.</p>
<p>21. Commenter shared the personal experience of their 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.</p>	<p>Comment noted.</p>

<b>Comment Summary</b>	<b>Response</b>
<p>22. Commenter shared the personal experience of their 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.</p>	<p>Comment noted.</p>
<p>23. Commenter suggested that current discipline policies 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.</p>	<p>Comment noted. See response to 1-A-27.</p>
<b>Best Practices and Alternatives to Suspension</b>	
<p>24. Several commenters recommended OSPI provide stronger guidance on alternatives to suspension and expulsion, and require schools to use alternatives in every instance.</p> <p>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.</p>	<p>No action taken. See response to 1-A-19.</p>
<p>25. Commenter noted that RCW 28A.165.035 does not include strategies for behavior but is about appropriate use of LAP funds.</p>	<p>Comment noted.</p>
<b>Comment Summary</b>	
<b>Response</b>	
<p>26. Commenter expressed support for school districts using mediation, and recommended OSPI do whatever could be done to encourage schools to do this.</p>	<p>Comment noted.</p>
<p>27. Commenter stated that when students need credit 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.</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>28. Commenter shared their personal experience with 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.</p>	<p>Comment noted.</p>
<p>29. Commenter suggested that suspension rates could be decreased if schools use proper interventions, including social emotional learning. The commenter recommended the rules suggest how a school district should intervene to address situations.</p>	<p>No action taken. OSPI agrees with the commenter that evidence-based behavior intervention strategies can have the effect of reducing rates of exclusion. However, OSPI 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.</p> <p>In addition, OSPI does not believe the proposed change is necessary for the reasons identified in the response to 2-A-13.</p>
<p>30. Commenter expressed the need for clear and consistent guidelines on suspensions, and alternatives to suspension should be the expectation.</p>	<p>No action taken. See response to 1-E-11.</p>
<p>31. Commenter suggested that compliance with many of 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.</p>	<p>Comment noted.</p>
<p>32. Commenter noted that educators do not want to 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.</p>	<p>Comment noted.</p>

<b>Parent Engagement</b>	
33. Commenter expressed appreciation for the proposed rules giving parents more opportunity to engage and requiring cultural competency.	Comment noted.
34. Commenter recommended that the rules include 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.	Action taken. See response to 1-A-30.
35. Commenter suggested that parents should always be involved when suspensions occur.	Comment noted.
36. Commenter observed that many of their school district's non-English speaking families, as well as many of their low-income English-speaking families, do not read academic literature in their home language at a very competent level, nor do they always receive written information from school in an efficient way. Many of these families move a lot or are living with others and do not 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.	No action taken. The final rules provides that school districts must provide notice to limited-English proficient students consistent with Title VI of the Civil Rights Act of 1964 whenever the district removes a student from class (WAC 392- 400-335(2)) or school (WAC 392-400-455(3)).
<b>Disproportionate Discipline</b>	
37. Commenter suggested rules should be in place to solve the problem of disproportionate discipline of students with special needs and students of color.	No action taken. See response to 1-A-95.
38. Commenter noted there is a lot of disproportionate 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 noted.
and not subtle ways people with differences are discriminated against.	
<b>Comment Summary</b>	
<b>Response</b>	
<b>Implementation of rules</b>	
39. Commenters noted concern about the timeline for when 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."	Action taken. See response to 1-A-65.

<b>Implementation of rules</b>	
40. One commenter noted that due to significant delays in 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.	Action taken. See response to 1-A-65.
41. Commenter expressed concern that the substantial rule 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.	Action taken. See response to 1-A-65.
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.	Comment noted.
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 1-A-81.
<b>Comment Summary</b>	<b>Response</b>
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 instruction. If there is no accountability around the rules, schools will not necessarily do what the intent was.	Comment noted. See response to 1-A-89.

Comment Summary	Response
<p>45. Commenter requested language to make clear what 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?"</p>	<p>No action taken. See response to 1-A-89.</p>
<p>46. Commenter expressed concern about the understandability of the rules, noting that school administrators who provided comment on the proposed rules did not seem to understand them. "When I see 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.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p><b>Other General Comments</b></p>	
<p>47. Commenter shared their personal experience as a 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."</p>	<p>Comment noted.</p>
<p>48. Commenter recommended the rules explicitly prohibit school districts from removing students from school for attempted suicidal behavior. The commenter noted this has been happening for decades, and they provided an example of a client who was emergency expelled when they were in crisis. The commenter stated this is the wrong use of school discipline, and it is really painful for families.</p> <p>If OSPI needs to come up with a different set of regulations to address the needs of students with acute healthcare crisis, that may need to happen. Commenter also noted that OSPI has a similar provision in the rules that prohibits suspension and expulsion for truancy.</p>	<p>Action taken. OSPI agrees with the commenter that emergency expelling a student for attempting suicide is not an appropriate intervention. First, WAC 392-400-510(1)(a) applies only in cases where there is an immediate and continuing danger to "other students" or school staff. Second, OSPI has revised the final rule to provide that, beginning in 2019, "an immediate and continuing threat of material and substantial disruption of the educational process" under WAC 392-400-510(1)(b) 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. See WAC 392-400-510(2).</p>

Comment Summary	Response
<p>49. Commenter recommended the rules explicitly prohibit school districts from removing students from school when they are in crisis. The commenter noted that, in addition to the different menu of options that school districts should have before administering a suspension or expulsion, there should also be some language in the rules about appropriately evaluating the student and making sure they are accessing services that should be available to them through multi-tiered systems of support.</p>	<p>No action taken. OSPI declines to adopt the commenter’s proposed changes because it believes that imposing obligations on districts to provide appropriate evaluations or health-related interventions to students in crisis is beyond the scope of this rulemaking.</p> <p>However, OSPI notes that, starting in 2019, 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 trauma-informed approaches and behavioral health.</p> <p>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.</p>
<p>50. Commenter noted that students are missing out on instruction from being sent home but just as importantly from being in classrooms that are disrupted by extreme behaviors.</p>	<p>Comment noted.</p>
<p>51. Commenter suggested every student needs to have the appropriate placement along with support educators to provide the best instruction possible.</p>	<p>Comment noted.</p>
<p>52. Commenter shared their personal experience as a parent of a student who was suspended over a hundred 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.</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>53. Several commenters noted that suspensions and 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.</p> <p>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.</p>	<p>No action taken. See response to 1-A-95.</p>
<p>54. Commenter noted that they have spoken with parents 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.</p>	<p>Comment noted.</p>
<p>55. Commenter expressed appreciation for OSPI’s commitment to clarifying student discipline regulations and aligning them with current statutes.</p> <p>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.</p>	<p>Comment noted.</p>
<p>56. Commenter expressed concern that approximately \$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?</p>	<p>Comment noted.</p>
<p>57. Commenter expressed support for the new 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.</p>	<p>Comment noted. Refer to response to 1-A-95.</p>
<p>58. Commenter suggested that with the influx of police in schools, the proposed rules need to have language that protects students from police reaction and harm. Police in schools should not have any direct contact with students related to discipline.</p>	<p>No action taken. OSPI believes that the commenter’s proposed change is beyond the scope of these rules.</p>



Comment Summary	Response
<p>59. Several commenters noted that requiring reporting of 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.</p>	<p>Comment noted.</p>
<p>60. Commenter thanked OSPI for its initial round of consideration of comments on the proposed rules, 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.</p>	<p>Comment noted.</p>
<p>61. Commenter noted that they understand OSPI finds 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.</p>	<p>Comment noted.</p>
<p>62. Commenter observed their organization is receiving an 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.</p>	<p>Comment noted.</p>
<p>63. Several commenters noted that while they have 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.”</p>	<p>Comment noted.</p>
<p>64. Commenter expressed concern about what “as soon as 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?</p>	<p>Comment noted. See response to 1-Y-17.</p>

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

Comment Summary	Response
<p>1. Commenter requested clear strategies and 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.</p>	<p>Comment notes. See response to 1-A-95.</p>
<p>2. Several commenters expressed concern that the 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.”</p>	<p>Action taken. See response to 1-A-2.</p>
<p>3. Commenter suggested revising the purpose subsection “Improve fairness and equity in the administration of discipline.” The commenter noted that school districts take strong exception to the message “improve” implies. The commenter recommended “promote” or “ensure” would send the same strong message.</p>	<p>Action taken. OSPI agrees with the commenter’s proposed language, and the final rules have been amended as suggested.</p>
<p>4. One commenter suggested OSPI’s perspective on 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.”</p> <p>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</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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.</p> <p>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.”</p>	
<p>7. Commenter suggested the purpose section of the rules 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.”</p>	<p>Action taken. See response to 1-A-2.</p>
<p>8. Commenter noted that small school districts cannot hire a resource officer or a teacher to babysit students who 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.</p>	<p>Comment noted.</p>
<p>9. The commenter suggested that administrators are scared that families will bring lawsuits against schools if their children are removed and noted that we have to think about the other children in the classroom who are not represented.</p>	<p>Comment noted.</p>
<p>10. Commenter noted there should be absolutely no excuse 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.</p>	<p>Comment noted.</p>
<p>11. Commenter shared the personal experience of a parent 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</p>	<p>Comment noted.</p>

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 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.	Comment noted.

**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
1. Commenter recommended OSPI further define “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.”	Action taken. See response to 1-A-84.
2. Several commenters expressed support “culturally 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	No action taken. See response to 1-A-84.

Comment Summary	Response
<p>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.”</p> <p>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).”</p>	
<p>3. Commenter noted the definition for “culturally responsive” makes sense.</p>	<p>Comment noted.</p>
<p>4. Commenter suggested the “classroom exclusion” mean “the exclusion of a student from a classroom or instructional or activity area by a teacher. . .”</p>	<p>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).</p>
<p>5. Commenter suggested the definition of emergency expulsion include the “immediate and continuing threat of material and substantial disruption of the educational process” language.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>6. Commenter suggested the “short-term definition” definition be listed before the “long-term suspension” definition.</p>	<p>No action taken. OSPI believes that listing definitions in alphabetical order improves clarity and readability.</p>
<p>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.</p>	<p>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.</p>

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

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

Comment Summary	Response
<p>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.</p>	
<p>3. Commenter recommended OSPI be really clear in WAC 392-400-110(2) that school district should be monitoring the impact of discipline on disproportionality, to both students of color and students with disabilities; educational outcomes; school safety and climate, and the opportunity gap.</p>	<p>No action taken. OSPI believes the commenter’s proposed change is not necessary for the reasons provided in the response to 1-A-95.</p>
<p>4. Commenter suggested the distribution of policies and procedures requirement in WAC 392-400-110(3) explicitly include the ability for a school district to distribute the policies and procedures by distributing information regarding how to access the discipline policies and procedures on the district’s website.</p>	<p>No action taken. OSPI believes the proposed change is not necessary because the final rules allow districts flexibility in determining how to disseminate discipline policies and procedures in a manner consistent with the statutory requirement under RCW 28A.320.211(1).</p>

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

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

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

Comment Summary	Response
<p>1. Commenter recommended OSPI strike proposed WAC 392-400-335, suggesting it has no basis in current statute, and it appears to be an overreach of OSPI’s rulemaking authority. The commenter noted the grievance process for classroom exclusions has no basis in current statute. The commenter also noted the process is so burdensome and such a departure from current practice, it will act as a deterrent to the teacher’s exercise of their statutory right to exclude a disruptive student from their classroom, cause confusion and delay in collective bargaining, and interfere with school districts’ obligation to protect the educational process from unnecessary disruption.</p>	<p>No action taken. OSPI believes it is authorized under RCW 28A.600.015 and RCW 28A.600.020 to adopt rules prescribing students’ substantive and procedural due process rights regarding forms of discipline, as classroom exclusions, that are not suspensions or expulsions. Indeed, the prior rules provided a grievance procedure for “discipline”—defined in former WAC 392-400-205(1) as all forms of corrective action other than emergency removal from a class, subject or activity, suspension, or expulsion and 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.</p> <p>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).</p> <p>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.</p>
<p>2. Commenter expressed concern that when students are excluded for a short amount of time for a student conference or to reset expectations, the time and</p>	<p>Action taken. See response to 1-G-2.</p>

Comment Summary	Response
<p>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.</p>	
<p>3. Commenter suggested the reporting requirements for 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.”</p>	<p>Comment noted.</p>
<p>4. Commenter noted WAC 392-400-335 regarding 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.</p>	<p>Comment noted.</p>
<p>5. Several commenters expressed concern that the 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.”</p> <p>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.</p> <p>Another commenter noted these requirements would get in the way of important one-on-one relationships between teachers and students.</p> <p>The commenters recommended WAC 392-400-335 be deleted or revised to establish a reasonable condition upon which notification and reporting requirements are triggered.</p>	<p>Action taken. See response to 1-G-2.</p>
<p>6. Commenter suggested WAC 392-400-335 appears 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</p>	<p>Action taken. See response to 1-H-3.</p>



Comment Summary	Response
<p>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.</p>	
<p>7. Commenter noted that the new reporting requirements 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.</p>	<p>Comment noted.</p>
<p>8. Commenter expressed concerns about the practicality 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.</p>	<p>Comment noted.</p>
<p>9. Commenter questioned how classroom exclusions will be reported, and how there will be a full picture presented by the district regarding classroom exclusions, suspensions, and expulsions.</p>	<p>Comment noted.</p>
<p>10. Commenter noted that their school is trying to create 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.</p>	<p>Comment noted.</p>
<p>11. Commenter noted it is insulting to be told that OSPI 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 students.</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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 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.</p> <p>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.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. Commenter noted how important parents, guardians, and families are in supporting their child in school, and the earlier involvement they have the better. The commenter recommended OSPI provide more explicit guidance and 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.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>2. Commenter stated that they believe WAC 392-400-430(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."</p>	<p>Comment noted.</p>
<p>3. Commenter expressed concern that the proposed 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</p>	<p>No action taken. See response to 1-E-8.</p>

Comment Summary	Response
<p>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.</p>	
<p>4. Commenter recommended OSPI provide clarity about what alternatives to suspension should look like and what individual circumstances should be considered. This will benefit students and school districts.</p>	<p>Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.</p>
<p>5. Several commenters recommended OSPI define what “individual circumstances” related to students must be considered.</p> <p>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.</p>	<p>No action taken. See response to 1-E-8.</p>
<p>6. Commenter shared their personal experience as a 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.</p>	<p>Comment noted.</p>
<p>7. Commenter suggested renaming the section heading for WAC 392-400-430, “Preventing students from completing academic requirements,” noting it implies bad faith on the part of school districts and is inappropriate in state regulations.</p>	<p>Action taken. OSPI agrees with the commenter’s proposed language, and the final rules have been amended as suggested.</p>
<p>8. Commenter suggested the proposed WAC 392-400-430(3) implies a school district may suspend the provision of educational services, provided they do not prevent a student from completing subject, grade-level, or graduation requirements. The commenter recommended OSPI revise this subsection to more closely track RCW 28A.600.015(8).</p>	<p>Action taken. OSPI agrees with the commenter’s proposed change, and WAC 392-400-430(3) has been amended to clearly separate the two independent clauses.</p>
<p>9. Commenter expressed concern regarding a statement 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.” The commenter questioned whether OSPI has provided a list of best practices to school district. The commenter also</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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."</p>	
<p>10. Commenter questioned whether OSPI gave 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.</p>	<p>Comment noted.</p>
<p>11. Commenter recommended WAC 392-400-430(4) should be revised to state "a school district must provide a <u>reasonable</u> opportunity for students to receive educational services during a suspension or expulsion . . ."</p>	<p>No action taken. OSPI declines to adopt the commenter's proposed language because it believes the language is not 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.</p>
<p>12. Commenter shared their experience as an 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.</p>	<p>Comment noted.</p>
<p>13. Commenter suggested that administrative transfers should not be allowed.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>14. Several commenters expressed concern that the 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</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>

Comment Summary	Response
<p>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.</p>	
<p>15. Commenter noted that their school district will 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.</p>	<p>Comment noted.</p>
<p>16. Commenter recommended the prohibition of 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 <u>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.</u>"</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>17. Commenter stated that schools need an option to 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.</p>	<p>Comment noted.</p>
<p>18. A commenter noted it is important to involve a family in transfer decisions, but school districts need the ability to</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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.</p>	
<p>19. Several commenters expressed concerns with WAC 392-400-430(4)(c) regarding administrative transfers, 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.</p>	<p>Comment noted. See response to 1-I-16 and 1-I-19.</p>
<p>20. Commenter suggested that without further guidance, the reference in WAC 392-400-430(4)(c) to school districts’ 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</p>	<p>Comment noted. See response to 1-I-16 and 1-I-19.</p>

Comment Summary	Response
<p>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.</p> <p>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.</p>	
<p>21. Commenter expressed concern about the administrative transfer provision. The commenter shared 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.</p> <p>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.</p> <p>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.</p>	<p>Comment noted. See response to 1-I-16 and 1-I-19.</p>
<p>22. Commenter recommended OSPI eliminate language pertaining to administrative transfer after suspension and 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>

Comment Summary	Response
<p>23. Commenters suggested the proposed rule prohibiting 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>24. Commenter suggested the proposed rule prohibiting 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>25. Commenter observed that administrative transfers of a student after suspension or expulsion do not happen frequently, but if all parties agree the behavior will be improved with a transfer, it seems like a positive outcome for all involved.</p>	<p>Comment noted. See response to 1-I-16 and 1-I-19.</p>
<p>26. Commenter noted that their school district has had a 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.</p> <p>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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>27. Commenter expressed concern about the language 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</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>



Comment Summary	Response
<p>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.</p> <p>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.</p>	
<p>28. Commenter expressed concern about the provision 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>29. Commenter recommended OSPI eliminate language 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>30. Commenter opposed the proposed provision 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</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>

Comment Summary	Response
<p>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.</p>	
<p>31. Commenter expressed concern that the proposed WAC 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.</p> <p>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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>32. Commenter suggested OSPI remove language 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.</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>
<p>33. Commenter expressed concerns about administrative 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</p>	<p>Action taken. See response to 1-I-16 and 1-I-19.</p>

Comment Summary	Response
<p>commenter recommended parents and students be included in that decision making.</p>	
<p>34. Commenter recommended that students who are in 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.</p>	<p>No action taken. See response to 1-J-5.</p>
<p>35. Commenter expressed concern that the proposed rules 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.</p>	<p>Comment noted.</p>
<p>36. Commenter stated that the current and proposed discipline rules fail to encourage discipline because they allow students to remain in school and continue disruptive 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.</p>	<p>No action taken. See responses to 2-A-3 and 2-A-10.</p>
<p>37. Several commenters expressed support for removing academic term and other limits on suspensions to avoid 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.</p> <p>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</p>	<p>No action taken. See responses to 2-A-3 and 2-A-10.</p>

Comment Summary	Response
<p>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.</p>	
<p>38. Commenter expressed support for eliminating out-of-school suspension at least from kindergarten to grade five.</p>	<p>Comment noted.</p>
<p>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.</p>	<p>No action taken. See response to 2-A-10.</p>

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

Comment Summary	Response
<p>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.”</p>	<p>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.</p>
<p>2. Commenter recommended that students in grades K–4 should not be suspended.</p>	<p>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.</p>

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

Comment Summary	Response
<p>1. Commenter questioned whether the proposed rules 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</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>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."</p>	
<p>2. Commenter questioned how the limitation on administering long-term suspensions beyond the school year in which the behavioral violation occurred applies to summer school.</p>	<p>Comment noted.</p>
<p>3. Commenter expressed concern that the limitation on 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.</p>	<p>No action taken. See response to 1-K-5.</p>
<p>4. Commenter suggested limitations on long-term 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.</p>	<p>Comment noted</p>
<p>5. Several commenters urged OSPI to strike WAC 392-400-440(4) and (5), which prohibits a school district from long-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</p>	<p>No action taken. See response to 2-A-10.</p>

Comment Summary	Response
<p>also prohibit a school from transferring the student to a more optimum learning environment.</p>	
<p>6. Commenter opposed limitations on suspending 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.</p> <p>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.</p>	<p>Comment noted.</p>
<p>7. Commenter expressed concern about the proposed 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.</p>	<p>Comment noted.</p>
<p>8. Commenter urged OSPI to take every opportunity in the rules to require school districts to use alternatives to 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.</p>	<p>No action taken. See responses to 1-A-16 and 1-A-19.</p>

Comment Summary	Response
<p>9. Commenter stated schools need to be able to long-term 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.</p>	<p>Comment noted.</p>
<p>10. Commenter noted they are seeing many students 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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. Commenter recommended the rules reference RCW 28A.600.420 regarding firearm expulsions even though it is referenced in the proposed WAC 392-400-420, noting schools and families might be confused about the exception.</p>	<p>No action taken. The final rules reference RCW 28A.600.420 and the statutory language is fully included in WAC 392-400-820.</p>
<p>2. Commenter suggested that the limitation on expulsions 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."</p>	<p>Comment noted.</p>
<p>3. Commenter suggested that the reference to RCW 28A.600.015(6) in WAC 392-400-445 is potentially confusing because the statute references "discretionary 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)."</p>	<p>Action taken. OSPI agrees with the commenter's proposed language, and the final rules have been amended as suggested.</p>

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

Comment Summary	Response
<p>1. Commenter noted that most school leaders already 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.</p>	<p>Comment noted.</p>
<p>2. Several commenters recommended WAC 392-400-450(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 <i>Goss v. Lopez</i>. 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.</p>	<p>No action taken. See response to 1-M-5.</p>
<p>3. Commenter noted that proposed changes to WAC 392-400-450 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.</p>	<p>Comment noted.</p>
<p>4. Several commenters recommended OSPI revise WAC 392-400-450 to ensure that administrators notify parents before conducting an initial meeting with a student facing both short-term and long-term suspension and allow parents to be present for the meeting. Commenter noted this is particularly important for young students, who will have difficulty advocating for themselves.</p>	<p>No action taken. The final rules are consistent with RCW 28A.600.020(3), which requires school districts to adopt discipline procedures providing that teachers and school administrators “make every reasonable attempt to involve the parent or guardian and the 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.</p> <p>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.</p>



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 392-400-450(2), requiring administrators to make a reasonable attempt to contact the student’s parent so they may participate in the initial hearing, could make it very challenging for administrators to make decisions that are in 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.	Comment noted. OSPI disagrees with the commenter’s contention that it may be in a child’s best interest to exclude their parents from an initial hearing.
6. Commenter noted that the proposed rules represent a significant improvement upon the current rules in terms of ensuring parents are able to participate, especially regarding the possibility for parents to be notified before an initial hearing with the principal and student. However, the commenter noted that this effectively means that elementary school students will be suspended without any parental involvement being initiated by the school because elementary students in grades K–4 cannot be long-term suspended or expelled and the proposed provision for short-term suspensions only allows the student to contact 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. OSPI believes the commenter’s proposed changes are not necessary because WAC 392-400-110(3) requires school districts to annually provide the district’s discipline policies to parents in a language they can understand—including policies setting forth parents’ right to be involved in an initial hearing for short-term suspensions. In addition, WAC 392-400-430(1)(b) provides that districts must make every reasonable attempt to involve parents in the resolution of behavioral violations.
7. Commenter noted that students are not getting social 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 action taken. See response to 1-M-4.
8. Commenter recommended that parents should be given the opportunity to meet with administrators before their student is suspended, especially when the child has	No action taken. See response to 1-M-4.

Comment Summary	Response
<p>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.</p>	
<p>9. Commenter suggested OSPI revise the rules to ensure administrators notify parents before conducting an initial meeting with a student. Many students have difficulty advocating for themselves.</p>	<p>No action taken. See response to 1-M-4.</p>
<p>10. Commenter expressed concern about the proposed 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.</p> <p>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.</p>	<p>No action taken. See response to 1-M-5.</p>

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

Comment Summary	Response
<p>1. Commenter recommended schools be allowed to 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.</p>	<p>No action taken. See response to 1-N-2.</p>
<p>2. Commenter requested OSPI prohibit school administrators from leaving voicemails on parents’ phones as notification of suspension. There needs to be a more collaborative approach.</p>	<p>No action taken. See response to 1-N-2.</p>
<p>3. Commenter noted that the student and parent notice 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.</p>	<p>Comment noted.</p>

Comment Summary	Response
<p>4. Commenter expressed support for the provisions that 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.</p>	<p>No action taken. See response to 1-N-6.</p>

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

Comment Summary	Response
<p>1. Commenter agreed that parent communication is 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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. Commenters noted that the one school business day timeline for scheduling an appeal hearing in WAC 392-400-465(4)(a) is a very quick turnaround, given that a school district would have to coordinate school, family, and hearing officer schedules. One commenter suggested 3–5 days would be reasonable.</p>	<p>No action taken. See response to 1-P-12.</p> <p>OSPI believes it is important to ensure that students and parents can quickly appeal a suspension or expulsion once it has commenced. OSPI encourages school districts to tentatively plan the scheduling of appeal hearings at the time written notice of the discipline is provided.</p>
<p>2. Commenter noted that due process timelines for 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.</p>	<p>No action taken. See response to 1-P-12.</p>
<p>3. Several commenters expressed concern that the 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 <i>de minimis</i> right. The</p>	<p>No action taken. See response to 1-P-1.</p>

Comment Summary	Response
<p>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.</p> <p>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.</p>	
<p>4. Commenter expressed concern that school districts 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.</p>	<p>Comment noted. See response to 1-P-15.</p>
<p>5. Commenter expressed concerns about the adversarial 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.</p>	<p>Comment noted.</p>

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

Comment Summary	Response
<p>1. Commenter expressed concern that the proposed rules 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.</p>	<p>No action taken. See response to 1-Q-1.</p>

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

Comment Summary	Response
<p>No comments.</p>	

**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
<p>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.</p> <p>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.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>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:</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Action taken. See response to 1-E-7.</p>

Comment Summary	Response
<p>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.”</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.”</p> <p>Commenters also suggested that emergency expulsions for disruption were also expressly approved by the United States Supreme Court in <i>Goss v. Lopez</i>, 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.</p>	
<p>3. Commenter expressed confusion at OSPI’s proposal of removing the “material and substantial disruption”</p>	<p>Action taken. See response to 1-E-7.</p>

Comment Summary	Response
<p>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.</p>	
<p>4. Commenters requested school districts to emergency expel a student when they pose a danger to their self, 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.</p>	<p>Action taken. See responses to 2-A-48 and 2-A-49.</p>
<p>5. Commenters noted that the removal of the “material 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.</p>	<p>Action taken. See response to 1-E-7.</p>
<p>6. Commenter raised concerns about proposed limitations 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.</p>	<p>Comment noted. See response to 1-E-7.</p>
<p>7. Commenter expressed concern about removing the use of emergency expulsions for students in grades K–4. The commenter noted this is a tool they use very seldom, but it is needed. “I believe there’s a perception that students in 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</p>	<p>No action taken. See response to 1-J-5.</p> <p>The final rules do not include grade-level limitations for emergency expulsions.</p>

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% 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.	Comment noted.
9. Commenter requested OSPI make model discipline forms available for districts, noting that most parents who receive emergency expulsion notices don't understand the notice, and they are not provided information about their rights, readmission, or who they can contact. The lack of communication is big.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
10. Commenter recommended the rules include more specific criteria for "danger." The commenter noted the words schools use to justify removals do not match the student's behavior.	No action taken. See response to 1-K-5.

**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.**

<b>Comment Summary</b>	<b>Response</b>
<p>1. Commenter noted that the teacher is a critical 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.</p>	<p>No action taken. See response to 1-Y-1.</p>
<p>2. Commenter questioned how school districts will access funds to staff the requirements in proposed WAC 392-400-610.</p>	<p>Comment noted. See response to 1-Y-31.</p>
<p>3. Commenter observed that transportation seems to be an overextended expectation in educational services, nothing that transportation is a privilege, not a right.</p>	<p>Comment noted.</p>
<p>4. Commenter noted that the given the requirements in proposed WAC 392-400-610, school leaders will be required to find a balance between providing educational services, working within Collective Bargaining Agreement guidelines, both with limited budget and resources.</p>	<p>Comment noted.</p>
<p>5. Commenter recommended OSPI be explicit about “out-of-school placement” verses “out of school.” The commenter noted some school districts interpret the Gun-Free Schools Act to not allow the district to provide educational services to students who are expelled for gun-related violations. The commenter noted the Gun-Free 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.</p>	<p>No action taken. OSPI believes the final rules and underlying statutes are clear. Requirements regarding the provision of educational services during suspension or expulsion apply regardless of whether an expulsion was mandatory under RCW 28A.600.420 or not.</p>
<p><b>“Comparable, equitable, and appropriate”</b></p>	
<p>6. Commenter noted this requirement does not appear to contemplate serious discipline offenses such as bringing a 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.</p>	<p>Comment noted. See responses to 1-Y-23 and 2-Y-5.</p>
<p>7. Several commenters noted that the proposed 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</p>	<p>Action taken. See response to 1-Y-23.</p>

Comment Summary	Response
<p>OSPI’s Bulletin’s used the same “should” language. The commenters propose the rule be consistent with the language in HB 1541.</p>	
<p>8. Several commenters observed the proposed “comparability requirement” in WAC 392-400-610(1) would present practical problems. The commenters shared an example of the challenges a school district would have in providing a student access to comparable shop class if there is only one such class in the district. The commenters further expressed concern that they may be required to provide a comparable shop class, with sharp tools and dangerous equipment, for a student who has engaged in violent behavior.</p>	<p>Action taken. See response to 1-Y-23.</p>
<p><b>Educational services for short-term suspensions</b></p>	
<p>9. Commenter suggested that the proposed WAC 392- 400-610(4) and (5) exceed OSPI’s statutory authority in RCW 28A.600.015 to prescribe “the substantive and procedural due process guarantees of pupils in the public schools” because this proposed section seeks to prescribe to school districts specifically how to provide educational services. The commenter also notes that these proposed requirements do not appear to be consistent with what the legislature has authorized school districts to do with regards to providing educational services in RCW 28A.600.020(7). “We believe the legislature granted districts more discretion regarding the best ways to accomplish this legal obligation, and the proposed language goes beyond substantive and procedural rights.”</p>	<p>No action taken. See response to 1-Y-23.</p>
<p>10. Commenter suggested WAC 392-400-610(5)(b) be revised as follows: “School personnel must attempt to contact the student or parents within three school business days . . .”</p>	<p>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 . . .”</p>
<p>11. Commenters stated the requirements in proposed WAC 392-400-610(4)(b) and (5)(b) create a significant unfunded mandate as these is no funding for these services (access to school personnel) in the prototypical funding model. The required services will fall either on classroom teachers or counselors, who are already working a maximum capacity. The commenters noted it is an excellent idea and would be fully supported if funding came along with the requirement.</p>	<p>Comment noted. See response to 1-Y-31.</p>
<p>12. Commenter expressed concern that the proposed rules indicate educational services will be provided by school personnel, noting that “school personnel” is arbitrary and vague. The commenter wondered who will be helping students stay on track, answering questions, or addressing challenges. The commenter recommended the rules be</p>	<p>No action taken. See response to 1-Y-20.</p>

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
<p>1. Commenter noted that the proposed definition of “cultural responsiveness” for reengagement plans is 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.</p> <p>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 . . . ?”</p> <p>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.”</p>	<p>No action taken. See responses to 1-A-48 and 1-A-84.</p>
<p>2. Commenter observed that the reengagement section 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.</p>	<p>Comment noted.</p>

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

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

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	Response
<p>1. Several commenters expressed concerns with the proposed rule allowing schools to continue to administer 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.</p> <p>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.”</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>2. Several commenters noted that it does not make sense to require a new school district to provide full due process</p>	<p>Action taken. See response to 1-BB-2.</p>

Comment Summary	Response
<p>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.</p> <p>One commenter questioned why a student would get additional due process just because he moved during his long-term suspension.</p> <p>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.</p> <p>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.”</p>	
<p>3. Commenter noted that the initial proposed rule 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.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>4. Commenter noted that OSPI should not allow a student suspended in one district to continue to be suspended in another school district. Kids need a clean slate.</p>	<p>Action taken. See response to 1-BB-2.</p>
<p>5. Commenter suggested that suspensions should not carry from one district to another.</p>	<p>Action taken. See response to 1-BB-2.</p>

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

Comment Summary	Response
<p>1. Commenter expressed support for including regulations 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.</p>	<p>No action taken. See response to 1-CC-2.</p>

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

Comment Summary	Response
<p>No comments</p>	

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

Comment Summary	Response
<p>No comments</p>	

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

**3-A. General Comments**

Comment Summary	Response
<p>1. Commenter observed the new definitions, 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.’”</p> <p>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</p>	<p>Comment noted.</p>

Comment Summary	Response
responsibilities, and that there are laws/rules to back them up when they need it.”	
<p>2. Commenter noted that one of the most significant 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.</p>	<p>Comment noted. See response to 1-A-53.</p>
<p>3. Commenter stated that current discipline policies do not well serve students of color, low income students, and foreign or Latino parents.</p>	<p>Comment noted. See response to 1-A-53.</p>
<p>4. Commenter recommended that the state needs to implement policies that are more inviting and informative to 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.</p>	<p>Comment noted. See responses to 1-A-48 and 1-A-53.</p>
<p>5. Commenter raised concern that many Latino families do 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.</p>	<p>Comment noted. See response to 1-A-83.</p>
<p>6. Commenters noted that we need to protect all our students by providing a safe and supportive learning environment for all students.</p>	<p>Comment noted. See response to 1-A-2.</p>
<p>7. Commenters noted that we need to protect all our students by enabling school staff to apply appropriate discipline so there are consequences for violating behaviors.</p>	<p>Comment noted.</p>
<p>8. Commenters noted that we need to protect all our students by restricting students from remaining in school when they pose a threat or danger to others.</p>	<p>Comment noted. See response to 2-A-10.</p>
<p>9. Commenters noted that we need to protect all our students by removing students from classes and school when they pose an immediate or continuing threat of</p>	<p>Comment noted. See response to 1-E-7.</p>

Comment Summary	Response
material and substantial disruption of the educational process.	
10. Commenters noted that we need to protect all our 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.	Comment noted. See response to 1-E-7.
11. Commenters noted that we need to protect all our students by applying discipline for behavior that adversely impacts the health or safety of others.	Comment noted.
12. Commenters noted that we need to protect all our students by protecting victims by precluding a student from returning to the regular educational setting following the end date of a suspension or expulsion for the purpose of protecting victims.	<p>Action taken. The final rules include a provision on protecting the rights of victims, WAC 392- 400-810, which clarifies that, in accordance with RCW 28A.600.460, a school 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.</p> <p>However, this provision does not authorize a school district to exclude a student from the student’s current school placement.</p>
13. Commenters noted that we need to protect all our students by protecting teacher and staff victims by reassigning the offending student to another school for the duration of the student’s attendance or wherever the teacher is assigned.	Comment noted. See responses to 1-I-16, 1-I-19, and 3-A-12.
14. Commenter noted that when all other reasonable, rational attempts and best practices have been tried and exhausted, student removal is necessary.	Comment noted.
15. Commenter noted that dangerous and irrational behavior needs immediate attention.	Comment noted.
16. Commenter noted that the current rights of offenders far exceed rights for victims.	Comment noted. 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.
17. Commenter raised concerns about the limitations that 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.	Comment noted. See response to 2-A-13.
18. Commenter observed that their school district’s public comment on the discipline rules included an argument for	Comment noted.



Comment Summary	Response
<p>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.</p>	
<p>19. Commenter shared their experience as a parent of a students who have been repeatedly bullied in school. The commenter noted that the principal and superintendent 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.</p>	<p>Comment noted. See responses to 1-A-2, 2-A-3, and 2-A-10.</p>
<p>20. Commenter raised concerns about how their school district disciplines students, including concerns about the 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.</p> <p>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.”</p>	<p>No action taken. See response to 1-A-53, 1-A-83, and 1-A-95.</p>
<p>21. Several commenters stated the following: “As educators, we see the value of what quality educators do every day and we want all children to experience success in 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.”</p>	<p>Comment noted. OSPI believes school district administrators and educators have substantial discretion under the final rules.</p>
<p>22. Commenter noted that the proposed rules improve the 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.</p>	<p>No action taken. See response to 1-A-65.</p>
<p>23. Commenter questioned whether OSPI gave considerable thought to the rights of victims. The commenter expressed concern that by encouraging schools to not suspend students, the proposed rules neglect the</p>	<p>Comment noted.</p>

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 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.	Comment noted. See response to 1-Y-31.
25. Commenter recommended OSPI provide a list of best practices for limiting the use of suspension and expulsion.	No action taken. See response to 1-I-2.
26. Commenter recommended OSPI ensure that the proposed rules do not conflict with comprehensive threat assessment processes. The commenter observed the importance of threat assessments, and noted that some districts may shorten proper assessments and due diligence to return a student to school. In serious cases, a school district may need more time before returning a student to school.	Comment noted. See response to 2-A-3.  OSPI reviewed threat assessment materials, including those recommended by the commenter, and believes the final rules are consistent with existing threat assessment processes.
27. Commenter stated that our children should be safe in 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.	Comment noted. See response to 2-A-3.
28. Commenter observed that decreasing suspensions is an evidence-based practice to help improve school safety.	Comment noted.
<b>Students with Disabilities</b>	
29. Commenter shared their personal experience as a 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.	Comment noted.
30. Commenter shared their personal experience as a 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 noted.

Comment Summary	Response
states the student is not allowed to be outside of the school without an adult. The commenter stated these situations were inappropriate uses of discipline and suspensions.	
31. Commenter noted that students with disabilities experience disproportionate discipline in Washington. While 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.	No action taken. See responses to 1-A-6 and 1-A-95.
32. Commenter shared the personal experience of a 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 of school.	Comment noted.
<b>Implementation of Rules</b>	
33. Several commenters urged OSPI to not delay the 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).	No action taken. See response to 1-A-65.
34. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-430, students would be suspended without any attempt to use other forms of discipline and without consideration of student’s individual circumstances to warrant the exclusion during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.	No action taken. See response to 1-A-65.  The prior rules that remain in effect for the 2018–19 school year generally provide that other forms of discipline should be considered before imposing a suspension. See WAC 392-400-245(2); WAC 392-400-260(4); and WAC 392-400-275(4).
35. Commenters expressed concern that because of the 2019 effective date for the sections of the final rules concerning in-school suspension, in-school suspensions will be entirely unregulated and students who are assigned in-school suspension during the 2018–19 school year will be denied the support of school personnel to ensure their continued academic progress. The commenters recommended that all sections of the final rules go into effect immediately.	No action taken. See response to 1-A-65.  In-school suspensions are already regulated in accordance with existing laws regarding the use of suspensions. In accordance with WAC 392-400-610 of the final rules—and consistent with OSPI Bulletin 050-16 “Provision of Educational Services During Suspension or Expulsion” which 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.”
<p>36. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-445(4), K–4 students will continue to be expelled during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>OSPI acknowledges that the limitation in WAC 392-400-445(4), precluding school districts from expelling students in grades K–4, does not go 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.</p>
<p>37. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-450 and WAC 392-400-520, students will continue to be suspended and emergency expelled without any attempt to engage parents early during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>RCW 28A.600.020(3) requires school district procedures to “provide for early involvement of parents in attempts to improve student’s behavior.”</p>
<p>38. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-450, parent notification for short-term suspension will not identify the behavioral violation during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>OSPI does not agree with the notion that the effective date for WAC 392-400-450—a section containing provisions that simply augment existing laws (particularly RCW 28A.600.020(3), 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.</p>
<p>39. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-465, parents will not be notified of the opportunity to participate in a reengagement meeting during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>OSPI does not agree with the notion that the effective date for WAC 392-400-465—a section containing provisions that simply augment existing laws (particularly RCW 28A.600.022(1), 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.</p>
<p>40. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-465, school districts</p>	<p>No action taken. See response to 1-A-65.</p>

Comment Summary	Response
<p>will issue untimely decisions related to suspension and expulsion during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>OSPI does not agree that the rules in effect for 2018–19 do not authorize school districts to issue untimely decisions.</p>
<p>41. Commenters expressed concern that because of the 2019 effective date for sections of the final rules pertaining to language access, school districts will deny language access to limited English proficient parents during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>The provisions in the final rules regarding language access simply clarify requirements under existing federal and state laws. The effective date for the language access provisions of the final rules does not affect regulatory expectations for the upcoming school year.</p>
<p>42. Commenters expressed concern that because of the 2019 effective date for WAC 392-400-430(9), school districts will exclude students from their regular educational setting beyond the end date of a suspension or expulsion during the 2018–19 school year. The commenters recommended that all sections of the final rules go into effect immediately.</p>	<p>No action taken. See response to 1-A-65.</p> <p>OSPI does not agree with the notion that the effective date for WAC 392-400-430—a section containing provisions that simply augment existing laws and agency guidance—will necessarily have the effect implied by the commenters.</p> <p>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.</p>
<p>43. Hundreds of commenters stated the following:</p> <p>“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.”</p> <p>“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</p>	<p>No action taken. See response to 1-A-65.</p>

Comment Summary	Response
<p>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.</p> <p>“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.”</p> <p>Several dozen of these commenters added additional comments about the proposed effective dates for the proposed rules.</p>	
<p>44. Commenter shared their personal experience as a 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.</p> <p>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.</p> <p>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.”</p>	<p>No action taken. See response to 1-A-65.</p>
<p>45. Commenter shared their personal experience as a 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.”</p>	<p>No action taken. See response to 1-A-65.</p>
<p>46. Commenter shared their personal experience as a 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</p>	<p>No action taken. See response to 1-A-65.</p>

Comment Summary	Response
discipline continues to be a problem, and students need protections now.	
47. Commenter stated that these policies should go into 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.	No action taken. See response to 1-A-65.
48. Commenter noted the need for these new rules is 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."	No action taken. See response to 1-A-65.
49. Commenter recommended OSPI put the rules in place 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.	No action taken. See response to 1-A-65.
50. Commenter noted that the law changed in 2016, and 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.	No action taken. See response to 1-A-65.
51. Commenter stated that school districts need training, resources, and support to implement the rules.	Comment noted. OSPI intends to provide technical assistance and guidance to assist school districts, parents, and advocates in implementing the rules.
52. Two commenters provided comments on the prior student discipline rules.	Comment noted.

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

Comment Summary	Response
1. Commenter recommended WAC 392-400-010(5) read "Administer discipline in ways that respond to the needs and strengths of all 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.	No action taken. See response to 2-A-3.

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

Comment Summary	Response
No comments.	

**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 does not include a definition for “in-school suspension.”	Comment noted.

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

Comment Summary	Response
1. Commenter noted that the proposed rules do not include a definition for “corrective action.”	No action taken. See response to 1-E-4.
2. Commenter recommended OSPI retain the current definition for “discipline.”	No action taken. See response to 1-E-4.
3. Commenter noted that the proposed rules do not include a definition for “discretionary discipline.”	Comment noted.
4. Commenter expressed appreciation for the clarification to the “classroom exclusion” definition.	Comment noted.
<p>5. Several commenters observed that OSPI removed provisions from the proposed rules that prohibited school 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.”</p> <p>The commenters requested OSPI clarify the definitions of expulsion and suspension as follows:</p> <p>“‘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.”</p> <p>“‘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.”</p>	<p>No action taken. See responses to 1-A-16 and 1-A-19.</p>



Comment Summary	Response
6. Commenter recommended OSPI reduce the maximum 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.	No action taken. See response to 1-I-9.

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

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

**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
1. Commenter suggested the classroom exclusion rule allow for a multiple day in-school suspension, like a “behavioral classroom.”	No action taken. OSPI believes the commenter’s proposed change is not 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 classroom exclusions to the superintendent or designee is	No action taken. See response to 1-H-3.

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 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.	No action taken. See response to 1-H-3.
3. Commenter noted it is not necessary to require a school to notify the superintendent or designee about classroom exclusions. This process takes considerable time and effort.	No action taken. See response to 1-H-3.

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

Comment Summary	Response
1. Commenter recommended OSPI remove the subsection related to completing academic requirements.	No action taken. The language in this section 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 responsible for their child’s education if their child is expelled.	No action taken. OSPI disagrees with the commenter’s suggestion that parents be 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 requirement that a school district must return a student to 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	No action taken. See response to 1-I-16 and 1-I-19.

Comment Summary	Response
<p>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.”</p> <p>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.”</p>	
<p>4. Commenter recommended OSPI remove the provision that requires a school district to make reasonable efforts to return the student to the student’s regular educational setting as soon as possible. The commenter recommended a student not return until the suspension or expulsion is over.</p>	<p>No action taken. See response to 1-I-16 and 1-I-19.</p>
<p>5. Commenter observed that the rules are very repetitive and could be consolidated to make more succinct and to the point reading. The commenter suggested that the conditions and limitations sections could be consolidated to one section.</p>	<p>No action taken. OSPI believes the rules are clearly and concisely written. Consistent with OSPI’s statutory authority under RCW 28A.600.015(1), OSPI believes different discipline actions require different conditions and limitations to adequately protect the interest of students.</p>

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

Comment Summary	Response
<p>1. Commenter noted that the 10-day limit to suspensions 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.</p>	<p>No action taken. See response to 1-J-5.</p>
<p>2. Commenter stated that students in grades K–4 should 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.”</p>	<p>No action taken. See response to 2-J-2.</p>
<p>3. Commenter recommended OSPI remove grade-level limitations to short-term suspensions.</p>	<p>No action taken. See response to 1-J-5.</p>

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

Comment Summary	Response
<p>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.</p>	<p>Comment noted.</p>
<p>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?”</p>	<p>No action taken. See response to 1-J-5.</p>
<p>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.</p>	<p>No action taken. See response to 1-J-5.</p>

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

Comment Summary	Response
<p>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.”</p>	<p>No action taken. See response to 1-J-5.</p>
<p>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.</p>	<p>No action taken. See response to 3-M-5.</p>

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

Comment Summary	Response
<p>1. Commenter expressed concern that the proposed WAC 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</p>	<p>No action taken. See response to 1-M-5.</p>

Comment Summary	Response
<p>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.”</p> <p>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.</p>	
<p>2. Commenter recommended that, at the initial hearing, 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.</p>	<p>No action taken. See response to 1-M-5.</p>

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>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 need to have such an elaborate appeal scheme, especially when students who are suspended and expelled receive robust educational services.”</p>	<p>No action taken. See response to 1-P-2.</p>

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

Comment Summary	Response
<p>No comments.</p>	

**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
<p>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.”</p> <p>“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.”</p> <p>The commenter urged OSPI to limit emergency expulsion to instances of immediate and continuing danger to other students or school personnel.</p>	<p>No action taken. See response to 1-E-7 and 2-A-48.</p>
<p>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</p>	<p>No action taken. See response to 1-E-7.</p>

Comment Summary	Response
<p>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.</p> <p>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.</p>	
<p>3. Commenter expressed support for adding "immediate and continuing threat of material and substantial disruption" back to the definition of emergency expulsion.</p>	<p>Comment noted.</p>
<p>4. Commenter raised concerns pertaining to WAC 392-400-510(2)(b), regarding school personnel exhausting reasonable attempts at administering other forms of discipline to support a student in meeting behavioral expectations before determining that the student poses an immediate and continuing threat of material and substantial disruption of the educational process. The commenter noted that this may 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 threatening another student with a knife. In these cases, there was not time to exhaust reasonable attempts at administering other forms of discipline.</p>	<p>Comment noted. OSPI believes the examples of behavior the commenter's offer here would likely demonstrate sufficient cause that the student's presence poses an immediate and continuing danger to other students or school personnel, thereby warranting an emergency exclusion under WAC 392-400-510(2)(a).</p>

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>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.</p>	<p>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.”</p> <p>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.</p>

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

Comment Summary	Response
<p>No comments.</p>	

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

Comment Summary	Response
<p>1. Commenter suggested WAC 392-400-610(1)(a) be revised to read “The educational services must <u>be designed in a way to make it more likely that the student will be able to enable the student to</u> (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.</p>	<p>No action taken. See response to 1-I-26.</p>
<p>2. Commenter raised concerns regarding the provision 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.</p>	<p>No action taken. See response to 1-I-26.</p>
<p>3. Several commenters recommended OSPI clarify “subject 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?”</p>	<p>No action taken. See response to 1-I-26.</p>



Comment Summary	Response
<p>4. Several commenters noted 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.</p> <p>The commenter recommended OSPI revise WAC 392-400-610(1) as follows:</p>	<p>No action taken. See response to 1-I-26.</p>
<p>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 <del>subject</del>, grade-level, and graduation requirements.</p>	
<p>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.</p>	<p>No action taken. See response to 1-Y-1.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Action taken. See responses to 1-I-16 and 1-I-19.</p>

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

Comment Summary	Response
<p>No comments.</p>	

**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
<b>Long-term suspensions and expulsions administered by another school district</b>	
<p>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.</p>	<p>No action taken. See response to 1-BB-2.</p>
<p>2. Commenter noted that they prefer the stricken language that expressly permitted a school district to continue another school district’s suspension or expulsion.</p>	<p>No action taken. See response to 1-BB-2.</p>
<b>Exceptions for the purpose of protecting victims</b>	
<p>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.”</p>	<p>Comment noted.</p>
<p>4. Commenter recommended that sexual offenses be included in the list of reasons that a student may be excluded from a victim’s classroom.</p>	<p>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.</p> <p>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.</p>

<b>Exceptions for the purpose of protecting victims</b>	
5. Several commenters requested OSPI clarify the extent to which a school district may preclude a student from returning to his or her regular educational setting under proposed WAC 392-400-810. The commenters suggest the rule would still permit an offending student to be returned to the same school where their victim teachers or attends.	No action taken. The final rules are consistent with the statutory provisions under RCW 28A.400.460—which provides that a school district may remove the student “from the classroom of the victim for the duration of the student’s attendance at that school” but does not authorize a school district to exclude a
<b>Comment Summary</b>	<b>Response</b>
The commenters recommend the section be amended to read: “A school district may preclude a student from returning to the student’s regular educational setting, 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.”	student from the student’s current school placement.
6. Commenter expressed support for the new section “exceptions for the purpose of protecting victims.” However, the commenter expressed concern that other staff besides teachers, such as paraprofessionals, are not protected under this rule. The commenter also noted the rule is specific to classrooms, and suggested that hallways and other areas of schools should also be addressed.	<p>Comment noted. The final rules are consistent with the statutory provisions under RCW 28A.400.460—which provides that a school district may remove the student from the classroom of the victim for the duration of the student’s attendance at that school, but does not authorize a school district to exclude a student from the student’s current school placement.</p> <p>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.</p>
7. Commenter observed that it is challenging for a small and rural school district to return a student to different classroom to protect a victim, noting they often have one teacher per grade. The commenter suggested OSPI sponsor an online school program for school districts that lack resources.	No action taken. OSPI declines to adopt the commenter’s proposed changes because it believes that OSPI sponsorship of an online program is outside the scope of this rulemaking.
8. Commenters noted that we need to protect all our 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.	Comment noted. See response to 3-FF-5.

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

Comment Summary	Response
<p>1. Commenter noted that limiting behavior agreements to not exceed the length of an academic term seems unrealistic. Behavioral psychologists will affirm that behaviors do not disappear in days or 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.</p>	<p>No action taken. See response to 1-CC-5.</p>
<p>2. Commenter noted it will be burdensome for school staff 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.</p>	<p>No action taken. See response to 1-CC-5.</p>
<p>3. Several commenters noted that the limiting the duration 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."</p>	<p>No action taken. See response to 1-CC-5.</p>
<p>4. Commenter noted that behavior agreements are positive and are designed to incentivize good behavior. The commenter suggested the duration of behavior agreements not be limited to one term.</p>	<p>No action taken. See response to 1-CC-5.</p>

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

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

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

Comment Summary	Response
<p>1. Commenter recommended that schools should be allowed to impose physical consequences, such as running laps, for discipline in a physical education class.</p>	<p>No action taken. OSPI declines to adopt the commenter's suggested change because OSPI 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).</p>

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

<b>Comment Summary</b>	<b>Response</b>
1. Commenter recommended the school meals provision be revised to read, “may not . . . result in the denial or <u>significant</u> delay . . .” Commenter observed that without that 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.	No action taken. The language in the final rules aligns with the statutory provision under RCW 28A.235.270(1)(d).

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