



**CHANGES TO STUDENT DISCIPLINE REGULATIONS:
NEW REGULATIONS EFFECTIVE JULY 1, 2019**

March 1, 2019

Before the 2019-20 school year, school districts should prepare for significant modifications to Washington’s student discipline regulations. OSPI adopted permanent revised student discipline regulations on July 30, 2018. These regulations are being phased in over two school years and will be effective in their entirety as of July 1, 2019. OSPI’s stated intent in adopting the new regulations is to simplify and clarify due process procedures accompanying student discipline; to clarify confusing and vague regulations; to minimize adversarial relationships between families and school districts; to minimize exclusionary discipline practices; to increase community engagement in the development of discipline policies; and to provide guidance regarding the educational services that must be provided to a suspended or expelled student. These regulations are a marked departure from the structure that has been in place since 1977, and will require changes in student discipline practices, policies, procedures, and student handbooks. This document discusses the key changes to the student discipline regulations and is not a comprehensive summary of all applicable student discipline regulations.

Changes to Student Discipline Regulations Effective for the 2019-20 School Year and Beyond¹

- A. Important definitions will change.
 - 1. The current umbrella term for all forms of discipline, “corrective action,” will be replaced by “discipline,” newly defined as any action taken by a district in response to a behavioral violation.
 - 2. The current meaning of “discipline”—responses to behavioral violations not rising to the level of a classroom exclusion, suspension, or expulsion—will now be represented by the term “other forms of discipline.”
- B. The due process requirements for various forms of discipline will be overhauled.
 - 1. Before imposing any suspension or expulsion, the principal or designee must first conduct an “informal initial hearing” with the student to get the student’s perspective.
 - a. At that hearing, the administrator must provide the student with notice of the violation, the supporting evidence, and the discipline that may be

¹ Some of these changes are already in effect for the 2018-19 school year.

- imposed. After the hearing, the administrator must inform the student of the decision regarding discipline and the beginning and end dates for any discipline imposed.
- b. For informal initial hearings for short-term suspensions and in-school suspensions, the student must have the opportunity to contact the student's parents during the hearing. For informal initial hearings for long-term suspensions and expulsions, the administrator must attempt to contact the parents to provide an opportunity for them to participate in the hearing by phone or in person.
2. Districts will be subject to new notice requirements before imposing suspensions and expulsions. Districts will not be allowed to impose suspensions or expulsions until they have attempted to notify parents "as soon as reasonably possible."
 - a. The suspension or expulsion can begin once an informal initial hearing has occurred and an attempt at parental notification has been made; significantly, districts will no longer need to wait until a three school business day appeal period has run to begin a long-term suspension or expulsion.
 - b. Additionally, no later than one school business day following the initial informal hearing, districts must provide written notice to the student and parents that includes a description of the behavioral violation and how it violated the district's rules; the duration and conditions of the suspension or expulsion, including beginning and end dates; other forms of discipline that were considered and why the district decided to impose the chosen level of discipline; the opportunity to receive educational services; the parents' right to an informal conference with the principal or designee; the right to appeal and how to appeal; and for long-term suspensions and expulsions only, the opportunity for a reengagement meeting.
 3. Following a district's decision to suspend, expel, or emergency expel a student, the parents or the student will be able to request an optional "informal conference" with the principal or designee. This conference does not replace the right to an appeal, reengagement meeting, or petition for readmission. The conference must be held within three school business days of receiving the request. At the conference the parents or student will have a chance to share the student's perspective, learn more about the incident from the administrator, and attempt to resolve any disagreement regarding the discipline imposed.
 4. Changes will be made to the procedures for disciplinary hearings, which are now called "appeals." The first formal level of review for suspensions and expulsions, formerly called a "hearing," is now called an "appeal" or "appeal hearing." A student or parent must have at least five school business days (three for emergency

expulsions) from the date the district sent written notice of the disciplinary action to appeal to the superintendent or designee. During the pendency of the appeal, a suspension or expulsion may be imposed for up to ten days or until the appeal is decided, whichever is shorter.

- a. For appeals of short-term suspensions and in-school suspensions, the student and parents must have the opportunity to share the student's perspective orally or in writing with the superintendent or designee, who must deliver a written decision within two school business days after receiving the appeal. The written decision must include the result of the appeal; the duration and conditions of the suspension, including beginning and end dates; educational services being offered; and the right to request "review and reconsideration" by the school board or discipline appeal council.
 - b. Appeals of long-term suspensions, expulsions, and emergency expulsions may be heard by one of the following presiding officials, as designated by the board: the superintendent, a hearing officer, or discipline appeal council. Within one school business day of receiving the appeal request, the superintendent or designee must provide written notice of the time of the appeal hearing, the name of the presiding official, the right to inspect the evidence and district's witness list upon request, and the rights at hearing to be represented by counsel, question witnesses, and introduce evidence. The appeal hearing must be held within three school business days (two for emergency expulsions) of the date the superintendent or designee receives the appeal request. The written appeal decision must be provided to the student and parents within three school business days (one for emergency expulsions) after the hearing.
5. The procedures for appeals to the board or discipline appeal council will be simplified. These appeals will be known as requests for "review and reconsideration."
- a. The student and parents have ten school business days (five for emergency expulsions) from the date the district provides the written appeal decision to request review and reconsideration.
 - b. The board or council need not conduct a hearing, but must consider all available evidence and all records from the appeal, and may request to hear further arguments and gather additional information from the parties.
 - c. The board or council must provide a written decision within ten school business days (five for emergency expulsions) of receiving the request for review and reconsideration.

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6. Petitions to extend an expulsion will only be allowed after a reengagement plan is created, except for firearms violations. An extension may not exceed the length of an academic term.
- C. The substantive standards for when a school district may suspend or expel students will change.
1. Expulsions will only be allowed if (1) staff have first “considered” using other forms of discipline to support the student in meeting behavioral expectations, (2) the student commits a behavioral violation listed at RCW 28A.600.015(6)(a)-(d), which includes, for example, certain violations related to firearms, alcohol, felony sex offenses, assault, harassment, gang activity, vandalism, and any behavior that adversely impacts the health or safety of other students or staff, AND (3) the district determines that returning the student to school before completing the expulsion would pose an “imminent danger to students or school personnel.” Expulsions can be imposed for a first offense, so long as each of these conditions have been satisfied. Expulsion may be used for students in kindergarten through fourth grade only in the case of firearms violations.
 2. Long-term suspensions will only be allowed if (1) staff have first “considered” using other forms of discipline to support the student in meeting behavioral expectations, (2) the student commits a behavioral violation listed at RCW 28A.600.015(6)(a)-(d), which includes, for example, certain violations related to firearms, alcohol, felony sex offenses, assault, harassment, gang activity, vandalism, and any behavior that adversely impacts the health or safety of other students or staff, AND (3) the district determines that returning the student to school before the end of the suspension would pose an “imminent danger to students or school personnel” or an “imminent threat of material and substantial disruption of the educational process.” Long-term suspensions can be imposed for a first offense, so long as each of these conditions have been satisfied. Long-term suspension may be used for students in kindergarten through fourth grade only in the case of firearms violations.
 3. Short-term suspensions will only be allowed if staff have first “attempted” to use other forms of discipline to support the student in meeting behavioral violations.
 4. Districts may no longer suspend or expel a student for absences or tardiness.
- D. The regulations introduce two new disciplinary concepts.
1. The regulations introduce the term “behavioral violation” to mean a student’s behavior that violates the school district’s discipline policy.
 2. A teacher (or other school personnel if authorized by board policy) may impose a “classroom exclusion,” under which a student is excluded from an instructional area for up to the balance of a school day. If the student is excluded for only “a

brief duration” and remains under the supervision of school personnel during that time, no “classroom exclusion” has occurred. Before imposing a classroom exclusion, a staff member must attempt another form of discipline unless the student’s presence poses a danger to others or a threat of disruption to the educational process. If the student is excluded from an instructional area for a time longer than the balance of the school day, the removal must be treated as a suspension, emergency expulsion, or expulsion, rather than as a classroom exclusion. The staff member must report the exclusion to an administrator and the student’s parents “as soon as reasonably possible.” The student must be given an opportunity to make up any assignments or tests missed during the classroom exclusion.

E. The regulations clarify existing concepts.

1. The new regulations flesh out what “educational services” must be provided to a student during a suspension, emergency expulsion, or expulsion. The educational services must enable the student to participate in the general education curriculum; meet the district’s educational standards; and complete subject, grade, and graduation requirements. In formulating educational services for a student, districts must consider input from the student and the student’s parents and teachers, and what technology, transportation, or resources the student needs to participate fully in the educational services. The services may be provided in an alternative setting such as an alternative school, one-on-one tutoring, or online learning. Districts must provide written notice to the excluded student and parents regarding the educational services the district will provide. The regulations require different minimum service levels based on the length of a student’s exclusion from school.
2. “Disruption of the educational process,” an undefined concept under the old regulations, now is defined to mean the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.
3. Another previously undefined phrase, “length of an academic term,” is now defined as the total number of school days in a single trimester or semester, as defined by the school board.

F. The regulations formalize disciplinary concepts already in use in many districts.

1. Districts are expressly authorized to enter into “behavior agreements.” Behavior agreements can be used to reduce the length of an exclusion, in lieu of suspension or expulsion, or to hold a suspension or exclusion in abeyance. They can be conditioned on participation in treatment programs. Significantly, behavior agreements can only be used if authorized by a district’s policy or procedure. They cannot exceed the length of an academic term.

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2. The regulations will expressly address “in-school suspensions.” In-school suspension will mean a suspension up to ten days in which a student is excluded from the student’s regular educational setting but remains in the same school placement. Staff must be in the same physical location as the student at all times and be available to offer support with assignments and coursework. Otherwise, in-school suspensions are treated identically to short-term suspensions.

G. The regulations make numerous other miscellaneous changes.

1. If an emergency expulsion is converted to a suspension or expulsion, any days the student was emergency expelled must be applied to the suspension or expulsion.
2. The term “discretionary discipline” will no longer appear in the regulations. However, the underlying concept remains: as discussed immediately above, districts can only impose a long-term suspension or expulsion for the wide-ranging serious behavioral violations listed at RCW 28A.600.015(6)(a)-(d).
3. The term “exceptional misconduct” will no longer appear in the regulations, and districts should no longer designate any behavioral violations as such.
4. Districts will be required to annually distribute their discipline policies and procedures to all district personnel and ensure that employees and contractors are knowledgeable regarding same. The regulations will impose certain new requirements regarding the content of districts’ policies and procedures, including that they must include (for example) a menu of other forms of discipline the district will use before excluding a student, must include a menu of educational services that the district may provide during a suspension or expulsion, and must identify the personnel authorized to administer various forms of discipline.
5. Boards will have the option to designate a “discipline appeal council” (formerly known as a “disciplinary appeal council”) to hear and decide appeals or to consider requests for review and reconsideration of the district’s appeal decisions. Members of a discipline appeal council must be knowledgeable about the state discipline regulations and the rules specific to their school district.
6. Districts will be required to provide many specified communications “in a language that students and parents understand.” New for the 2019-20 school year, districts’ discipline policies and procedures, informal initial hearing proceedings, optional informal conferences, appeal proceedings and decisions, and review and reconsideration proceedings and decisions must be provided in a language that students and parents understand. These are in addition to the following list of communications which, as of 2018-19, already must be provided in a language that students and parents understand: notices of classroom exclusions, suspensions, expulsions, emergency expulsions, and expulsion extension petitions; the educational services offered during a suspension or expulsion; reengagement meetings and plans; and behavior agreements.

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7. Corrective actions and discipline cannot be imposed in such a way that would result in the “denial or delay of a nutritionally adequate meal to a student.”
8. Districts are no longer authorized to use “student disciplinary boards.”

Additional Assistance

PFR attorneys have developed additional professional development and training materials specific to these new student discipline regulations. The trainings cover what all school administrators need to know when administering student discipline, with a focus on the new due process requirements for imposing discipline, the new substantive requirements justifying each form of discipline, and other important concepts introduced or changed by the new regulations.

Option 1: If you are interested in receiving student discipline training for all building administrators and relevant central office administrators in your district, PFR attorneys are available to present at your district site. Please contact Jay Schulkin or any other attorney at Porter Foster Rorick to schedule such training. The flat fee for a three-hour student discipline training is \$2,500.

Option 2: Porter Foster Rorick will be holding five regional trainings on the new student discipline regulations. These three-hour trainings will be held at locations in northwest Washington, southwest Washington, midstate (Yakima area), the Kitsap Peninsula, and at our offices in downtown Seattle. We anticipate scheduling these trainings during the weeks of July 29 and August 5; further details regarding dates and locations will be forthcoming soon. Registration is only \$175 per person. Reserve a space by sending an email with the names of attendees to info@pfrwa.com.

Policies, handbooks and notices: The numerous significant changes in student discipline regulations require that all school districts update their board policies, administrative procedures, student handbooks, and discipline notice letters in time for the 2019-20 school year. If you need assistance with revising these essential documents, or have any questions about the changes in the law, do not hesitate to contact any attorney at Porter Foster Rorick.

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