NO. 1017995

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

M.G., by and with his Guardian ad Litem, Priscilla G.,

Appellants,

v.

Yakima School District No. 7, a municipal corporation,

Respondent

ANSWER TO PETITION FOR REVIEW

Sara Zier, WSBA #43075
TEAMCHILD
32 North 3rd Street, Ste 410
Yakima, WA 98901
sara.zier@teamchild.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

I. INTRODUCTION

M.G. opposes the Yakima School District's Petition for Review. M.G. wants finality in the decision so that he can get relief to receive the equivalent of the high school education he has been denied.

The case meets none of the criteria in RAP 13.4(b). The Court of Appeals decided this case based on plain-language statutory interpretation and consistent with persuasive authority. *See* RAP 13.4(b)(3) (review is appropriate if a significant issue of constitutional law is involved). The Court of Appeals analysis does not conflict with any decisions from this Court or the Court of Appeals. *See* RAP 13.4(b)(1); (2). While the issues raised on appeal by M.G. were of public importance, *see* RAP 13.(4)(b)(4), specifically related to the "push out" of students from their regular educational settings, the Court of Appeals reached the correct result on narrow statutory grounds. Nothing in the Court's opinion deprives school districts of the ability to manage safe schools. It only requires that school districts *also*

abide by laws and rules that protect students from wrongful and indefinite exclusion from school. Yakima School District previously acknowledged that, as decided, there is no conflict of law and even argued that this is not an issue of public importance when they opposed publication of the decision. This Court should deny review, as the decision of the Court of Appeals meets none of the criteria in RAP 13.4(b).

II. STATEMENT OF THE CASE

This case arose when M.G. was suspended from school but was not permitted to return after his suspension ended. CP 21. Yakima School District (District) suspended M.G. in September 2019, which was the fall of his freshman year of high school, for having a verbal argument with another student and wearing a red shirt. CP 22-23. After M.G. served a 12-day suspension, the District notified M.G. and his mother that he could not return to his regular school. CP 21. In its letter denying reentry, the District alleged "threatening behavior" but

not new or specific allegations. *Id.* The letter did not say where M.G. could go to school. *Id*.

Over a month after M.G.'s suspension ended and after he was not allowed to return to school, the District enrolled M.G. in an alternative learning environment, Yakima Online. CP 86-90, 95. M.G. appealed the District's decision to deny him return to his regular educational setting through letters and meetings based on the District's instructions.[1] CP 21, 33, 79-80, 36-37, 103-106, 146. In the meantime, M.G. regularly logged in to online school but struggled to make progress. CP 81-102.

Eventually after the District denied M.G.'s appeals to return to a regular educational setting, M.G. appealed the District's decision to deny him reentry to school and made a

---

[1] The appeal processes offered were written appeals and meetings with staff. CP 21, 33, 79-80, 36-37, 103-106, 146. The District raised concerns about M.G.'s haircut and other safety issues but never issued new discipline. *Id.* M.G. was never afforded the opportunity to deny allegations against him, the opportunity to ask questions of witnesses, or the judgement of a neutral decision maker. *Compare* WAC 392-400-465 (Suspensions and expulsions—Appeal).

complaint for declaratory judgment in Yakima Superior Court. CP 3-14. The Superior Court denied M.G. relief, dismissing his case, so M.G. appealed to Division III. CP 199-204.

III. ARGUMENT

1. The Court of Appeals Decision is not in Conflict with Decisions of the Supreme Court or a Published Decision of the Court of Appeals. RAP 13.4(b)(1)-(2).

The District is now arguing a conflict in case law, but there is none, which the District previously acknowledged. *See* Opp'n to Mot. to Publish Op., at 4, No. 38165-0-III, Jan. 27, 2023, ("The Court's decision is not in conflict with a prior opinion of the Court of Appeals."). While this Court has held that school districts have a duty of care for students, *see McLeod v. Grant Cty. Sch. Dist.*, 42 Wn.2d 316, 319-320, 255 P.2d 360 (1953), this Court has also found that school districts cannot develop and enforce policies that violate the law, *see, e.g., York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 299, 178 P.3d 995 (2008) ("warrantless random and

suspicionless drug testing of student athletes violates the Washington State Constitution"). It is not a conflict of law that school districts fulfill a duty of care *and* uphold the rights of students. These are complimentary, not conflicting, principles.

School districts have co-existing responsibilities to maintain a safe environment *and* honor the rights of students. *See* RCW 28A.320.015(1). State law both grants and limits school district authority: "each school district may exercise . . . broad discretionary power to determine and adopt written policies **not in conflict with other law**." *Id*. (emphasis added). In this case, the law plainly states that "[a]n expulsion or suspension of a student may not be for an indefinite period of time." RCW 28A.600.015(1).[2] While school districts may place a student in an alternative setting *during* a suspension, "the district may not preclude the student from returning to the

[2] The stated intent of the law is to "[r]educe the length of time students of color are excluded from school due to suspension and expulsion and provide students support for reengagement plans." Laws of 2016, ch. 72, § 1.

student's regular educational setting following the end date of the suspension or expulsion," unless a specific exception applies. WAC 392-400-430(8)(b). The District conceded the exceptions do not apply. *M.G. v. Yakima Sch. Dist. No. 7*, 24 Wn. App. 2d 703, 725 (2022).

The decision in this case does not upset the authority of school districts to make an enrollment policy; it only affirms that the District's enrollment policy must adhere to state law. *Id.* at 726 ("a school district's policy cannot conflict with state statutes"). Because there is no conflict of case law, this Court should deny review.

2. The Court of Appeals Decided this Case Based on Statute, Not Constitutional Questions. RAP 13.4(b)(3).

The Court of Appeals decided this case on statutory grounds and did not reach constitutional questions. *M.G.* at 726. Based on how the case was decided below, interpreting and applying statute and regulation, this Court should deny review.

3. This Court of Appeals' Decision Resolves the Important Issue of School "Push Out" and Requires No Further Action By This Court, and the District Conceded as Much Below. RAP 13.4(b)(4).

The District is now arguing that the Court of Appeals' decision is a matter of public importance. They previously argued the opposite. Specifically, the District wrote:

> This Court [the Court of Appeals] found that where M.G. was improperly denied access to schooling (education) he is entitled to compensatory education. This is not new law. **Students have a right to an education. When denied that right, a student is entitled to compensatory education**. . . .
>
> Because this case involved the application of the law to the facts specific to this matter, the general public has interest [sic] and **the case is not of import to the general public**.

Opp'n to Mot. to Publish Op. at 5-8 (emphasis added).

For M.G. and other similarly situated students, this case was a matter of public importance because school districts disproportionately "push out" students of color.[3] In other courts,

[3] Washington State Office of Superintendent of Public Instruction (OSPI), *Equity in Discipline Theory of Action*, at 2

the right to equitable relief is well established.[4] Washington State appellate courts have not previously reached this question. This case presented an opportunity for the Court of Appeals to adopt persuasive authority into a state court decision. It

---

(August 2019), https://www.k12.wa.us/sites/default/files/public/cisl/images/2019_08%20Equity%20in%20Discipline%20Theory%20of%20Action%20Background%20Document.pdf; *see also* OSPI, *Report Card*, State Total, https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/103300 (documenting disparities in discipline and dropout (graduation) rates).

[4] *See e.g., Milliken v. Bradley (II)*, 433 U.S. 267, 279-88, 97 S. Ct. 2749, 53 L. Ed. 2d 745 (1977) (desegregation decrees); *Parent of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994) (special education); *Liddell v. Missouri*, 731 F.2d 1294, 1313-1314 (8th Cir. 1984) (desegregation); *McFadden v. Bd. of Educ. for Ill. Sch. Dist.*, 984 F. Supp. 2d. 882, 903 (N.D. Ill. 2013) (discrimination in placement in gifted program). *See also* Kevin Golembiewski, *Compensatory Education Is Available to English Language Learners Under the EEOA*, Ala. Civil Rights and Civil Liberties L. Rev., Vol. 9, 2018, *available at https://ssrn.com/abstract=2959896*; Catherine E. Lhamon, Dear Colleague Letter: Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), pp. 14-19, 21-22, available at https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html (rescinded and under review, advising that compensatory education is a remedy for students who are suspended and expelled in violation of Title IV or Title VI).

mattered for M.G. and other students who seek action and relief from schools for violations of their rights, hopefully without prolonged litigation, and the Court of Appeals appropriately resolved the issue. While the issues raised in M.G.'s appeal and complaint are of public interest, they do not need further determination by this Court. More delay in this case is harmful to M.G. His exclusion from a regular school setting has lasted for four school years during this litigation, without relief. Accordingly, this Court should deny review.

4. The Court of Appeals Properly Determined this Case is not Moot

There is no basis under RAP 13.4 for this Court to accept review on the question of mootness. M.G. disputes many of the facts the District alleges, but, even so, the law is clear that the case is not moot because M.G. pled for relief that may still be granted. The unpublished federal district court opinion that the District cites actually supports that this case is not moot. *Alexis R. v. High Tech Middle Media Arts Sch.*, No. 07cv830 BTM

(WMc), 2009 U.S. Dist. LEXIS 67078, *21 (S.D. Cal. Aug. 3, 2009) ("compensatory education services may be an appropriate remedy even though [the student] is no longer a student in Defendants' schools"). *See also D.F. v. Collingswood Borough Bd. of Educ*., 694 F.3d 488, 497-98 (3d Cir. 2012) (claim for compensatory education was not moot even though the child moved out of district); *Lester H. v. Gilhool,* 916 F.2d 865, 872-873 (3d Cir.1990) (compensatory education available past the age of statutory eligibility for services). It is undisputed that M.G. lives within the school district's boundaries, and he has pled for equitable relief for the education he was denied. This Court should deny review.

IV. ISSUES ON APPEAL IF THE COURT ACCEPTS REVIEW

As set forth above, M.G. opposes review. However, if the Court grants review of the issues raised by the District, M.G. seeks review of the constitutional questions raised on appeal but unaddressed by the Court of Appeals. *M.G.* at 726. In addition

to the statutory rights implicated by the issues in the Petition for Review, M.G. respectfully requests that this Court consider these issues, but *only if* the Court also grants review of the issues raised by the District:

- Whether the District denied the student's constitutional rights to due process of law and the paramount right to education by effectively continuing a suspension indefinitely without procedural or other protections; and
- Whether the broad authority the District seeks to secure "safety," unlawfully expands the school district's discretion and effectively voids state laws and constitutional rights that protect against discrimination and disproportionate exclusion of students of color.

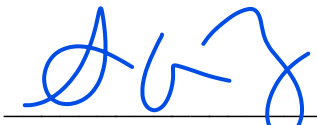
V. CONCLUSION

For the reasons articulated above, this Court should deny Yakima School District's Petition and decline to review this case.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b)(10) that, excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 1,891 words, as calculated by the word processing software used.

Respectfully submitted,



Sara Zier, WSBA #43075
TEAMCHILD
32 North 3rd Street, Ste 410
Yakima, WA 98901
sara.zier@teamchild.org

Dated: April 7, 2023

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on April 7, 2023, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Tacoma, Washington, this 7th day of April, 2023.

Sara Zier, WSBA No. 43075

TEAMCHILD

April 07, 2023 - 9:28 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,799-5
Appellate Court Case Title:	M.G., et al. v. Yakima School District No. 7
Superior Court Case Number:	20-2-01113-3

The following documents have been uploaded:

- 1017995_Answer_Reply_20230407092701SC808696_7272.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 1017995 - Answer to Pet. for Review.pdf

A copy of the uploaded files will be sent to:

- bob.noelaw@gmail.com
- dano@kcba.org
- noe.robert@ysd7.org
- teresa.harmon@teamchild.org

Comments:

Sender Name: Sara Zier - Email: sara.zier@teamchild.org
Address:
PO BOX 1512
TACOMA, WA, 98401-1512
Phone: 253-507-8435

Note: The Filing Id is 20230407092701SC808696