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DIVISION III  
STATE OF WASHINGTON  
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NO. 332829

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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EILEEN EDDY,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Washington State University (WSU or University) expelled undergraduate student Eileen Eddy following her fourth disciplinary proceeding in less than six months. Her expulsion was based on overwhelming evidence of a pattern of dishonest and destructive conduct that caused harm to other students and disruption of the educational environment. In the final proceeding, the University Conduct Board (Conduct Board) found that Ms. Eddy submitted several pieces of fabricated evidence to support her false claim that another student had assaulted her. The Conduct Board also sanctioned Ms. Eddy for her second academic integrity violation involving plagiarism, a violation the University's Academic Integrity Hearings Board (Academic Integrity Board) established at a prior hearing.

In each of the four proceedings, WSU provided Ms. Eddy with extensive due process and procedural protections. WSU also provided Ms. Eddy with an appeal in each of the four proceedings, which she actively pursued. At no time during any of the proceedings did Ms. Eddy object to the process WSU employed or request additional process.

The extensive process provided to Ms. Eddy went above and beyond that required by due process and the Washington Administrative Procedure Act (APA). She ultimately was expelled based on well-

established, substantial evidence of misconduct—an outcome no additional process would have altered.

Ms. Eddy appeals, arguing that she should have received a slightly different adjudicative proceeding—what the APA calls a formal adjudicative proceeding. Her appeal is without merit. First, she is raising an issue for the first time on appeal, which this Court cannot address. Second, WSU’s procedures were consistent with the requirements of the APA and WSU rules and there was no error in failing to modify the procedures into a formal proceeding. Third, Ms. Eddy identifies no prejudice caused by the procedures she received and, therefore, she has no basis for seeking relief based on the issue she presents.

## II. ISSUES PRESENTED FOR REVIEW

1. **RCW 34.05.554 prevents a court on judicial review from addressing an issue that was not raised before the state agency. Is Ms. Eddy’s claim that WSU erred by holding a brief adjudicative proceeding (BAP) rather than a formal adjudicative proceeding barred because she did not raise this issue during her student conduct proceeding?**

If the answer is “no,” the Court must also decide:

2. **Do WSU’s rules require it to employ a formal adjudicative proceeding in a student conduct proceeding where expulsion is a possible outcome?**
3. **Does the APA require WSU to employ a formal adjudicative proceeding in a student conduct proceeding where expulsion is a possible outcome?**

4. **Has Ms. Eddy sufficiently demonstrated substantial prejudice from the alleged error to obtain a remand for another proceeding?**
5. **If Ms. Eddy obtains the relief she seeks, is she entitled to attorney's fees?**

### III. STATEMENT OF THE CASE

#### 1. **WSU Student Conduct Proceedings**

WSU's rules governing student conduct prescribe expectations for student behavior and also provide the process to be followed in the event allegations of misconduct arise. In general, when a student is suspected of violating the Standards of Conduct for Students (Standards), a conduct officer performs an investigation. WAC 504-26-402. If the conduct officer believes a violation of the Standards occurred, the conduct officer can reach an agreed resolution with the student or resolve the matter with a hearing before the conduct officer or the Conduct Board. WAC 504-26-401(2)-(3); WAC 504-26-402. Any matter involving suspension or expulsion must be heard by the Conduct Board. WAC 504-26-401(3)(b). Before any hearing, an accused student is given notice of the hearing and the basis of the allegations. WAC 504-26-402(1). An accused student has an opportunity to present evidence and be assisted by an advisor. WAC 504-26-401(6). In the case of a Conduct Board hearing, the student also has the rights of discovery, to

call witnesses, and to question witnesses through the Conduct Board chair. WAC 504-26-403. At the conclusion of a conduct officer or Conduct Board hearing, the fact-finder renders a decision and a sanction, if any. *Id.*

Complainants and respondents in student conduct proceedings may appeal a Conduct Board or conduct officer decision to the University Appeals Board (Appeals Board). WAC 504-26-407(1). The Appeals Board's review is generally limited to the record of the prior hearing and is not a new hearing. WAC 504-26-407(2). The Appeals Board reviews hearings to ensure the student received a fair hearing and that procedures were followed, that substantial evidence exists in the record to support any decision, that any sanction is appropriate, and to consider any new information presented. *Id.* The Appeals Board also makes any inquiries necessary to determine if the procedure should be converted to a formal adjudicative proceeding under the APA. WAC 504-26-407(1)(c). The written decision of the Appeals Board becomes WSU's final order on the matter, except in cases of expulsion or loss of recognition, which may be reviewed by WSU's president at his or her discretion. WAC 504-26-407(4)-(6).

The process for adjudicating suspected academic integrity violations is a process separate from other student conduct violations. WAC 504-26-404. When an instructor believes a violation has occurred,

the instructor performs an investigation and provides notice to the student and an opportunity for the student to address the allegation. WAC 504-26-404(1). The instructor then makes a written finding regarding whether a violation has occurred and imposes an academic sanction in accordance with course policies. The instructor then informs the Office of Student Conduct (OSC).<sup>1</sup> *Id.*

A student aggrieved by this process may appeal to the Academic Integrity Board, which is separate and distinct from both the Conduct Board and the Appeals Board. WAC 504-26-404(2). If a student appeals an instructor's decision, the Academic Integrity Board then holds a separate and independent hearing to determine whether or not the student violated the University's academic integrity policies and, if so, whether the sanction imposed by the instructor is consistent with the course policies. *Id.* After conducting its separate hearing, the Academic Integrity Board issues a written decision, which then becomes WSU's final order on the matter. WAC 504-26-404(2)(c)(ii). If the Academic Integrity Board finds an academic integrity violation occurred, and it is the student's second academic integrity offense, the default procedure is that the student

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<sup>1</sup> At the time of Ms. Eddy's disciplinary proceedings, OSC was known as the Office of Student Standards and Accountability. WSU's WACs still reference the Office of Student Standards and Accountability, but this brief uses the office's current name, Office of Student Conduct, throughout.

then must appear before the Conduct Board with a recommendation that the student be dismissed from WSU. WAC 504-26-404(4).

## **2. Ms. Eddy's Student Conduct Proceedings**

In the spring 2014 semester, Appellant Eileen Eddy was an undergraduate student enrolled in several upper-level computer classes when she became the subject of four separate student conduct proceedings. CP 55-56, 142, 266, 297. Ms. Eddy's first proceeding began in February 2014, when Professor Adam Carter suspected that Ms. Eddy plagiarized a homework assignment in his Computer Science 483 course, Web Development. CP 48-56. In accordance with WSU's procedure, Professor Carter met with Ms. Eddy to discuss the allegations. CP 48. Ms. Eddy claimed she worked collaboratively with the author of the website that Professor Carter believed she plagiarized. *Id.* Ms. Eddy was unable to offer any proof, however, and when confronted with the fact that the website's author lived in the United Kingdom, Ms. Eddy indicated she turned the wrong file in for homework. *Id.* Professor Carter thought this explanation similarly unpersuasive as Ms. Eddy previously confirmed with him that the file she turned in was the one she intended to turn in for credit. *Id.* Professor Carter gave Ms. Eddy a zero on the assignment, finding that she violated the University's academic integrity policy. CP 48-49.

Ms. Eddy appealed Professor Carter's decision to the Academic Integrity Board, presenting numerous excuses but failing to provide any documentation to buttress her claims (in part, according to Ms. Eddy, because she signed a Non-Disclosure Agreement with the author of the website, a copy of which she did not provide). CP 41-42. The Academic Integrity Board scheduled and conducted a hearing where Ms. Eddy had the opportunity to present witnesses and other evidence as well as address the Academic Integrity Board. *Id.* and WAC 504-26-404(2)(c). After her hearing, in which Eddy participated, the Academic Integrity Board found by the preponderance of the evidence that Ms. Eddy plagiarized another's work. CP 24-25. The Academic Integrity Board also concurred with Professor Carter's sanction. *Id.* The Academic Integrity Board's decision was WSU's final decision on the matter (CP 24-25), from which Ms. Eddy did not appeal.

Ms. Eddy's second disciplinary matter arose in March 2014 when Ms. Eddy reported to Professor Sakire Ay, Assistant Director of the School of Electrical Engineering and Computer Science, that a fellow WSU student punched her in the face during a lab session. CP 140. Professor Ay encouraged Ms. Eddy to report the assault to police. *Id.* On April 9, 2014, Ms. Eddy filed an unrelated police report with the WSU

Police Department alleging four unknown males assaulted her.<sup>2</sup> CP 78-86. In connection with this report, she also mentioned the alleged assault she reported to Professor Ay, but that allegation was not investigated at that time. CP 92. On April 24, a separate WSU student contacted WSU Police regarding strange emails he was receiving from Ms. Eddy. *Id.* At that student's request, Officer Stewart also investigated the alleged computer lab assault previously mentioned by Ms. Eddy. CP 92-93. Officer Stewart went to the lab where Ms. Eddy alleged to have been assaulted and asked if anyone witnessed or knew of such an assault; all replied in the negative. CP 93. After completing his investigation, Officer Stewart concluded that Ms. Eddy fabricated the computer lab assault claim. CP 100.

The information regarding the computer lab assault accusation came to the attention of OSC when the alleged batterer submitted a statement detailing how the false accusations had substantially affected his physical and emotional wellbeing. CP 146-149. Specifically, the student wrote that he was having difficulty sleeping and eating and had stopped attending classes due to Ms. Eddy's allegations that he had assaulted her. CP 148. OSC sent a notice to Ms. Eddy informing her that the allegation

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<sup>2</sup> WSU Police Officer Kelly Stewart thoroughly investigated Ms. Eddy's claim that four unknown individuals assaulted her. CP 78-127. At the conclusion of the investigation, Officer Stewart concluded that Ms. Eddy created false evidence and fabricated the assault. CP 98, 100.

that she provided false information to a university official, if true, violated the Standard “Acts of Dishonesty” and arranged a meeting with Ms. Eddy to investigate and discuss the matter. CP 142-43. Adam Jussel, the Director of OSC (Director), conducted an investigation by reviewing Officer Stewart’s reports, interviewing the victim and Officer Stewart, collecting witness statements and emails (some of which were provided by Ms. Eddy), and meeting with Ms. Eddy on May 14, 2014. CP 75-141. At the meeting, Ms. Eddy maintained she was assaulted and that “everyone in the class” witnessed it, despite the fact that Officer Stewart found no one in the class who saw such an assault. CP 76. Ms. Eddy was unable to provide any names of witnesses at or after her meeting with the Director. *Id.* After conducting his investigation and personally meeting with Ms. Eddy, the Director found that Ms. Eddy fabricated the assault, subjecting her victim to “emotional and physical distress.” *Id.* The Director further found that these acts violated the Standard “Acts of Dishonesty” and sanctioned Ms. Eddy to a term of probation and to have no contact with the victim. CP 76-77. Ms. Eddy’s probation term expired May 31, 2015, and prohibited her from falsifying information, committing acts of dishonesty, or violating any other Standard. CP 76. The Director’s sanction warned that she could be expelled if she violated her probation. *Id.*

Ms. Eddy appealed the Director's decision to the University Appeals Board (Appeals Board), submitting new evidence consisting of a narrative, a photo, and two purported audio/video recordings of the alleged assault.<sup>3</sup> CP 67-68. The Appeals Board found Ms. Eddy's narrative to be inconsistent with what she told police, and the audio/video to be unpersuasive. CP 64. In regard to the audio/video, the Appeals Board noted that it obviously was not filmed in a classroom, but rather in an apartment as Ms. Eddy's feet could be seen walking on carpeted floor. *Id.* On June 27, 2014, the Appeals Board denied Ms. Eddy's appeal and upheld the Director's sanctions. CP 63-64. The Appeals Board's decision became WSU's final order on the matter (*Id.*), from which Ms. Eddy did not appeal.

During the pendency of Ms. Eddy's student conduct proceeding regarding the fabricated assault, a third disciplinary action involving a separate and distinct academic integrity violation began. On May 13, 2014, Dr. David Bakken, professor of Computer Science 464 (Distributed Systems Concepts and Programing), found that Ms. Eddy turned in several homework assignments copied without modification from another student

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<sup>3</sup> Eddy provided the audio/video recordings via a link to YouTube. The link has since been removed and the agency record does not contain a copy. CP 523/Appendix A (the Declaration of Adam Jussel (and Exhibit A thereto) was submitted in a Supplemental Designation of Clerk's Papers on September 18, 2015; for the court's convenience, it is also attached as Appendix A to this brief).

in his class, including one which even contained the victim student's user name on a screen shot. CP 339. Ms. Eddy appealed Professor Bakken's finding to the Academic Integrity Board, claiming that some unnamed students sent in the plagiarized homework on her behalf without her knowledge. CP 322-23. Ms. Eddy did not provide any names, however, and refused to do so despite requests from the Academic Integrity Board.<sup>4</sup> CP 310. On June 19, 2014, the Academic Integrity Board reviewed Ms. Eddy's written explanation, copies of the homework assignments, and written and oral explanations from Professor Bakken and his teaching assistant. CP 297-98. The Academic Integrity Board upheld Professor Bakken's finding and denied Ms. Eddy's appeal. *Id.* Specifically, the Academic Integrity Board found:

[no] sufficient reason to overturn the professor's claim regarding a violation of academic integrity. In fact, we found convincing evidence that a violation of academic integrity occurred. Upon reviewing your submitted homework, projects, and "screen scrapes" from this class, we found them to be exactly the same as assignments submitted by other students in the course. The "screen scrape" of the second project you turned in even included another student's user name on it.

CP 297.

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<sup>4</sup> Following the Academic Integrity Board's decision, Ms. Eddy did submit an email purportedly from an ex-student of Ms. Eddy's named "Joe Roman." CP 299-300. In the email, "Joe Roman" admitted that he had submitted the copied material on Ms. Eddy's behalf. *Id.* The Conduct Board later reviewed this matter and found that Ms. Eddy fabricated "Joe Roman" and the email in an attempt to escape blame for this second academic integrity violation. CP 215-16.

Following the Academic Integrity Board's denial of Ms. Eddy's second academic integrity violation appeal, OSC notified Ms. Eddy in writing that the Conduct Board would hold a hearing pursuant to WAC 504-26-404(4) to determine if Ms. Eddy should be expelled for her second academic integrity violation. CP 266-67. In doing so, OSC made clear that the Academic Integrity Board's findings regarding her second academic integrity violation were final and would not be subject to review by the Conduct Board. CP 266. In addition, OSC informed Ms. Eddy that at the same hearing the Conduct Board would also determine if Ms. Eddy violated the Standards by submitting false information to the Appeals Board during her appeal of the fabricated assault matter. *Id.* Specifically, the Conduct Board would determine if Ms. Eddy violated the following Standards: Acts of Dishonesty; Violation of University Policy, Rule, or Regulation; Unauthorized Use of Electronic or Other Devices; and Abuse of the Student Conduct System.<sup>5</sup> CP 268.

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<sup>5</sup> Ms. Eddy incorrectly states that the Conduct Board "met to review the facts and sanctions imposed by [the Director] and the Academic Integrity Board." Appellant's Br. at 2. The Conduct Board did not review a decision of the Director, it convened to make an initial factual determination regarding whether or not Ms. Eddy provided false information to the Academic Integrity Board. The Director did not issue any decision regarding that allegation; he merely investigated it. Furthermore, the Conduct Board did not review any sanction imposed by the Academic Integrity Board. The Conduct Board's task was to review the underlying facts of Ms. Eddy's second academic integrity violation in order to determine the proper sanction under WAC 504-26-404(4), not make an independent factual determination.

Before the Conduct Board's hearing, the Director collected information for the Conduct Board to review. The information provided to the Conduct Board consisted of: the entire record from Ms. Eddy's second academic integrity violation (CP 302-64); correspondence between Ms. Eddy and OSC regarding her second academic integrity violation (CP 281-301); Ms. Eddy's written appeal of the Director's findings in the fabricated assault proceeding, including the audio/visual recording she submitted to the Appeals Board (CP 273-76); a complete copy of Officer Stewart's police reports, including attachments (CP 232-64); and information provided by Ms. Eddy, including unsworn witness and character witness statements, her own written statement regarding the allegations, electronic communication between Ms. Eddy and OSC, and two new audio recordings, one purportedly of Ms. Eddy being slapped by her alleged assailant in the Computer Science lab, and another of a "conversation" between Ms. Eddy and her alleged assailant, which in fact was merely Ms. Eddy talking to herself (CP 220-231). This information was contained in Ms. Eddy's conduct file, which she could examine at any time prior to the hearing. CP 267, 269. On July 9, 2014, the Conduct Board held Ms. Eddy's hearing. CP 213. At the hearing, the Conduct Board considered the information contained within the conduct file, as well as additional evidence in the form of live witness testimony by

Ms. Eddy and Professor Aaron Crandall. CP 375-433. In addition, Ms. Eddy addressed the Conduct Board regarding the accusations and possible sanctions. CP 433-59.

On July 15, 2014, the Conduct Board issued an order detailing its findings and imposing sanctions. CP 213. It found that the audio recording of the slap Ms. Eddy provided was “even less persuasive than the [recording provided to the Appeals Board]” and was “a clumsy and amateurish attempt to mislead the [Conduct] Board.” CP 214. The Conduct Board found that Ms. Eddy’s testimony at the hearing contradicted statements she made to an OSC employee after the Academic Integrity Board rendered its second opinion. CP 215. As a result, the Conduct Board found that Ms. Eddy lied to both it and the Academic Integrity Board. *Id.* The Conduct Board further found that Ms. Eddy knowingly submitted false material to OSC on multiple occasions, and willfully fabricated and misrepresented evidence before the Conduct Board. *Id.* Based on these findings, the Conduct Board found Ms. Eddy “*Responsible* for violating WAC 504-26-202 (Acts of dishonesty)” and “WAC 504-26-219 (Abuse of the student conduct system)” but “*Not Responsible* for violation of WAC 504-26-209 (university policy) and WAC 504-26-217 (unauthorized use of electronic or other devices).” *Id.* As a sanction, the Conduct Board expelled Ms. Eddy from WSU,

trespassed her from the WSU campus, rescinded her Cougar Card privileges, and canceled her WSU email account. CP 216. WSU later withdrew the trespass order. CP 365.

Ms. Eddy appealed the Conduct Board's decision to the Appeals Board. CP 156-64. The Appeals Board considered all the information presented to the Conduct Board as well as a considerable amount of additional evidence provided by Ms. Eddy, which included a lengthy narrative and nine Internet links that comprise scores of pages of the agency record. CP 156-212. At no time during the process did Ms. Eddy request a formal adjudicative proceeding under the APA. The Appeals Board considered Ms. Eddy's information and deemed it either unrelated to the present appeal or information that was previously considered. CP 153. The Appeals Board found no error in the procedure and denied Ms. Eddy's appeal. WSU's President did not review the Appeals Board's decision, nor did Ms. Eddy request him to; therefore, the Appeals Board's August 19, 2014, decision became WSU's final order on the matter. CP 152-53.

Ms. Eddy filed a Petition for Judicial Review of Agency Action (Petition) in Whitman County Superior Court. CP 1-16. The agency action challenged in her Petition was limited to the Conduct Board's July 15, 2014, order and the Appeals Board's subsequent August 19, 2014,

order upholding the Conduct Board's July 15 order. CP 2. Her Petition did not challenge, and could not have challenged due to lack of timeliness, any previous orders of WSU.

The Honorable Judge Frazier considered briefing from both parties, the agency record, the Conduct Board's July 9, 2014, hearing transcript, and other information presented. CP 517-18. After hearing oral argument of the parties, Judge Frazier issued an order affirming WSU's decision. CP 517-18. Ms. Eddy appeals.

#### **IV. ARGUMENT**

##### **1. Standard Of Review**

A party seeking relief from agency action bears the burden of demonstrating not only the invalidity of such action, but also that the party was "substantially prejudiced" by it. RCW 34.05.570(1)(a), (d). This is the prejudice necessary to obtain relief, as opposed to the standing requirement in RCW 34.05.530.

Assuming that a party seeking judicial review can show substantial prejudice, a court may grant relief where it is found that the agency: 1) engaged in an unlawful procedure or decision-making process, or failed to follow a prescribed procedure; 2) erroneously interpreted or applied the law; 3) did not decide all issues requiring resolution; 4) issued an order

inconsistent with its own rule; or 5) issued an order that is arbitrary or capricious. RCW 34.05.570(3).

Issues of statutory interpretation are reviewed *de novo*. *Dep't of Rev. v. Bi-Mor, Inc.*, 171 Wn. App. 197, 202 (2012). However, in reviewing agency action, the reviewing court gives substantial weight to an agency's interpretation of its own rules. *Seatoma Convalescent Ctr. v. Dep't of Soc. & Health Servs.*, 82 Wn. App. 495, 518 (1996), *review denied*, 130 Wn.2d 1023 (1997).

When reviewing action alleged to be arbitrary or capricious, the scope of the review “is narrow, and the challenger carries a heavy burden.” *Keene v. Bd. of Accountancy*, 77 Wn. App. 849, 859 (citation omitted), *review denied*, 127 Wn.2d 1020 (1995). Arbitrary or capricious action is one that is unreasoned and “without consideration and in disregard of facts and circumstances.” *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 609 (citation omitted) (1995), *cert. denied*, 518 U.S. 1006 (1996). Where there is “room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous conclusion has been reached.” *Id.*

When reviewing agency action, “the appellate court stands in the same position as the superior court.” *Alpha Kappa Lambda Fraternity v. Washington State Univ.*, 152 Wn. App. 401, 413 (2009) (citation omitted).

Therefore, an appellate court reviews the agency decision based on the record before the agency, not the superior court's ruling. *Id.* The agency's unchallenged findings of fact are verities on appeal. *Heidgerken v. Dep't of Natural Res.*, 99 Wn. App. 380, 384 (2000) (citations omitted).

Here, as explained below, Ms. Eddy cannot meet her burden of showing error and also cannot meet her burden of showing prejudice, let alone substantial prejudice.

**2. Ms. Eddy Waived Her Right To Appeal WSU's Use Of A BAP Because She Failed To Raise Any Objection During The Adjudicative Hearings**

The APA limits a petitioner's ability to raise issues for the first time on appeal. It provides:

(1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

RCW 34.05.554.

In *King Cnty. v. Boundary Review Bd.*, 122 Wn.2d 648, 669, (1993), the court explained that RCW 34.05.554 serves important policy goals associated with the integrity of the administrative process. The court stated:

[R]ules like RCW 34.05.554 further the purposes of:

- (1) discouraging the frequent and deliberate flouting of administrative processes;
- (2) protecting agency autonomy by allowing an agency the first opportunity to apply its expertise, exercise its discretion, and correct its errors;
- (3) aiding judicial review by promoting the development of facts during the administrative proceeding; and
- (4) promoting judicial economy by reducing duplication, and perhaps even obviating judicial involvement.

*King Cnty. v. Boundary Review Bd.*, 122 Wn.2d at 669 (quoting *Fertilizer Inst. v. U.S. Envtl. Protection Agency*, 935 F.2d 1303, 1312-13 (D.C. Cir. 1991) (additional citation omitted)). See also *Motley-Motley, Inc. v. Pollution Control Hearings Bd.*, 127 Wn. App. 62, 75 (2005), review denied, 156 Wn.2d 1004 (2006) (holding failure to raise issue of equitable estoppel before agency precluded consideration for the first time on judicial review); and *Thurston Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 137 Wn. App. 781, 805 (2007) (citing RCW 34.05.554 in refusing to address whether the board relied on incorrect land use figures because it was not raised before the board) (reversed in part on other grounds by *Thurston Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329 (2008)).

Here, none of the exceptions in RCW 34.05.554 apply. First, there is no evidence that Ms. Eddy did not know or could not have reasonably discovered the possibility of asking for a formal adjudicative proceeding. This is evidenced both because she now identifies the issue on judicial review, and because the topic is apparent in WSU's administrative rules.<sup>6</sup> WAC 504-26-407(1)(c). The second exception in RCW 34.05.554 does not apply because the action under review is an order, not a rule. The third exception does not apply because there is no evidence in the record, and Ms. Eddy does not complain, that WSU failed to notify her of the adjudicative proceeding in substantial compliance with the APA. To the contrary, Ms. Eddy's presence and active participation in the Conduct Board's July 9, 2014, hearing establishes that notice was achieved. Finally, the issue did not arise from a change in the law or action by WSU after Ms. Eddy's hearings before the Conduct Board and Appeals Board. Therefore, the fourth exception similarly does not apply.

In her proceedings before WSU, Ms. Eddy actively participated and regularly brought both substantive and procedural objections to WSU's attention. *See, e.g.*, CP 292-94 (Ms. Eddy objecting to lack of notice). At no time did she object to WSU's use of a BAP or request the

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<sup>6</sup> OSC previously encouraged Ms. Eddy to become familiar with WSU's administrative rules controlling the conduct process by specifically referencing WAC 504-26. CP 144.

more formal proceeding. CP 22-471. If Ms. Eddy believed she was entitled to different procedures, she was required by RCW 34.05.554 to bring this issue to the attention of WSU so it could be addressed. She cannot hold this issue back and see what happens below. Her failure to raise the issue below precludes her from raising this issue here. *See Alpha Kappa Lambda*, 152 Wn. App. at 420 (refusing to address issue argued for the first time on appeal). As a result, her appeal should be dismissed and there is no need to address the remaining issues.

**3. WSU's Rules Do Not Require A Formal Adjudicative Proceeding In Student Conduct Proceedings In Which Expulsion Is A Possible Outcome**

Ms. Eddy argues that WSU was arbitrary and capricious in the administration of her final student conduct proceeding because it failed to follow its own rules. Appellant's Br. at 6. To support this argument, she relies on WAC 504-26-407(1)(c), which states "[t]he appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW)." *Id.* at 15. Ms. Eddy implies this rule mandates that the Appeals Board make an inquiry in every case as to whether a formal adjudicative hearing is necessary, particularly in cases involving expulsion. *Id.* at 6 and 15.

Ms. Eddy misconstrues the rule. If WSU intended to require the Appeals Board to make an inquiry in every case, the regulation would have stated “the Appeals Board shall make an inquiry in every case,” or alternatively “the Appeals Board shall make an inquiry in every case in which the student has been expelled.” Instead, WSU’s use of the phrase “any inquiries necessary,” which is taken from RCW 34.05.491(3), is intended to convey that such inquiries are not always necessary. In reviewing agency action, the reviewing court gives substantial weight to an agency’s interpretation of its own rules, as long as that interpretation is reasonable. *Seatoma Convalescent Ctr.*, 82 Wn. App. at 518.

Here, it is Ms. Eddy’s burden to demonstrate the invalidity of WSU’s action or lack thereof. Given that the issue was never raised by Ms. Eddy below, it is difficult to determine from the record whether the Appeals Board gave consideration to a formal proceeding or not. Ms. Eddy fails to point to anything in the record to support her contention that the Appeals Board did not consider the option of converting her hearing, and therefore her argument should be rejected. Even if it did not, no such inquiry was necessary. Nothing about the proceeding was so extraordinary that the Appeals Board should have raised the issue unilaterally. As set forth in the facts above, the Conduct Board hearing was focused on two issues: (1) the appropriate sanction for Ms. Eddy’s

two established academic integrity violations (which, according to WAC 504-26-404(4), go to the Conduct Board with a recommendation of dismissal from the University), and (2) whether Ms. Eddy willfully provided false evidence to OSC and the Appeals Board and, if so, the appropriate sanction for that offense in light of her previous conduct history. The process provided by the Conduct Board to hear these issues was in accordance with WSU's own rules and gave Ms. Eddy notice; an opportunity to be heard; an opportunity to present testimony, evidence, and witnesses, and to question opposing witnesses; an opportunity to have an advisor present, which she did; and the opportunity to appeal. This process went considerably beyond that required by due process case law. *See, e.g., Bd. of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 89, 98 S. Ct. 948, 954-55, 55 L.Ed.2d 124 (1978) (student was dismissed for academic deficiency; court stated, "Even in the context of a school disciplinary proceeding, however, [this] Court stopped short of requiring a *formal* hearing since 'further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as a part of the teaching process.'") (quoting *Goss v. Lopez*, 419 U.S. 565, 583, 95 S. Ct. 729, 741, 42 L.Ed.2d 725 (1975)); *Goss*, 419 U.S. at 581, 95 S. Ct. at 740 (students are entitled to a process

that is fundamentally fair, in that they receive notice of the charges against them and an opportunity to respond to the charges). Ms. Eddy's claim that WSU violated its own rules is without merit.

**4. The APA Does Not Require WSU To Employ A Formal Adjudicative Proceeding In A Student Conduct Proceeding, Even When Expulsion Is A Possible Outcome**

Washington's APA divides adjudicatory proceedings into two types: 1) adjudicative proceedings, RCW 34.05.410-.4791, and 2) brief adjudicative proceedings, or BAPs, RCW 34.05.482-.494. An adjudicative proceeding contemplates a right to full representation by counsel and direct cross-examination of witnesses by counsel, which are the two additional procedures Ms. Eddy now seeks in this case. RCW 34.05.428; 34.05.449(2).

The APA provides that a BAP may be used where:

- (a) The use of those proceedings in the circumstances does not violate any provision of law;
- (b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;
- (c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and
- (d) The issue and interests involved in the controversy do not warrant use of the procedures of [an adjudicative proceeding].

RCW 34.05.482(1). Like most institutions of higher education in the state of Washington, WSU by rule adopted BAPs for student conduct

proceedings. WAC 504-04-010(1) (Matters subject to brief adjudication); and, *e.g.*, Eastern Washington University (WAC 172-108-050, 172-121-120), Central Washington University (WAC 106-120-131, 106-120-132), Western Washington University (WAC 516-21-270 - 290), Spokane Community College (WAC 132Q-10-325), Wenatchee Valley Community College (WAC 132W-115-130), Columbia Basin Community College (WAC 132S-40-360), Big Bend Community College (WAC 132R-04-130), Skagit Valley Community College (WAC 132D-120-070), Everett Community College (WAC 132E-120-310), and Shoreline Community College (WAC 132G-108-050).

The adoption of a BAP for student conduct proceedings is consistent with the overwhelming majority of federal and state case law, which holds that a student who is subject to student disciplinary proceedings is entitled to a process that is fundamentally fair, including notice and an opportunity to respond to the charges, but that a student is *not* entitled to a full adversarial hearing. *Horowitz*, 435 U.S. at 89, 98 S. Ct. at 954-55. Furthermore, the courts have specifically rejected the argument that students are entitled to full representation by counsel and full cross-examination of witnesses that would occur in a formal adversarial proceeding. *See Nash v. Auburn Univ.*, 812 F.2d 655, 664 (11th Cir. 1987) (two students were expelled; “Where basic fairness is

preserved, we have not required the cross-examination of witnesses and a full adversary proceeding.”); *Gabrilowitz v. Newman*, 582 F.2d 100, 106 (1st Cir. 1978) (in case of assault with intent to rape, expulsion and trespass from university, student must be permitted advice of counsel at hearing; however, counsel need not be permitted to speak); *Donohue v. Baker*, 976 F. Supp. 136, 147 (N.D.N.Y. 1997) (in case of rape and threatened expulsion from university, there is no right to have counsel cross-examine witnesses; directing questions of witness through the panel was sufficient); *Osteen v. Henley*, 13 F.3d 221, 225 (7th Cir. 1993) (student was expelled for assaulting two people; court stated that “[e]ven if a student has a constitutional right to *consult* counsel . . . we do not think he is entitled to be represented in the sense of having a lawyer who is permitted to examine or cross-examine witnesses, to submit and object to documents, to address the tribunal, and otherwise to perform the traditional function of a trial lawyer. To recognize such a right would force student disciplinary proceedings into the mold of adversary litigation.”).

To the contrary, courts have upheld the use of procedures that include less protections than WSU affords in its BAP. In *Flaim v. Medical College of Ohio*, 418 F.3d 629 (2005), the Sixth Circuit Court of Appeals considered what procedures are required before a state college

can expel a student. In that case, the Medical College of Ohio expelled Flaim after he was convicted of a felony drug offense. *Flaim*, 418 F.3d at 632. The college procedure provided a hearing in front of a committee. *Id.* at 633. Following the hearing, the committee recommended sanctions to a Dean, who expelled Flaim. *Id.* At Flaim's hearing, Flaim's arresting officer appeared and provided testimony. *Id.* Flaim was allowed to have an attorney present at the hearing, but the attorney was not allowed to participate or even converse with Flaim. *Id.* Flaim was provided an opportunity to present evidence and argument to the board, but was not allowed to cross-examine the witness against him. *Id.* Flaim challenged the procedure on due process grounds. *Id.*

The *Flaim* court concluded that notice and an opportunity to be heard in front of a neutral fact finder is all that is required for student conduct cases where expulsion is a possible outcome. *Id.* at 634. It rejected the argument that counsel or cross-examination is required. *Id.* at 640-41.

Moreover, the Court should not misconstrue the BAP as if it were shortchanging Ms. Eddy on procedural protections. The record shows that the BAP here provided significantly more process than that required by *Flaim* or the other cases cited above. The procedure was fundamentally fair and afforded her the following:

- Ms. Eddy received written notice of the allegations against her, (CP 268);
- She received written notice of all anticipated witnesses and documentary evidence the University planned to submit at the Conduct Board hearing (CP 266-67);
- She was allowed to review all of the evidence against her, including what was provided to the Conduct Board before and during the hearing (CP 267, 269);
- She was given a reasonable opportunity to prepare for the hearing (CP 266);
- She was informed of her right to remain silent (CP 269);
- She was given the opportunity to respond to the allegations (CP 266, 269, 372, 375);
- She was allowed to submit documentary evidence to the Conduct Board (CP 266, 433-34);
- She made a sworn statement before the Conduct Board (CP 372, 375);
- She heard all of the witness testimony given at the Conduct Board hearing (CP 375-433);
- All witness testimony was given under oath (CP 425);
- She was given the opportunity to suggest cross-examination questions for the Conduct Board Chair to consider and ask if relevant and appropriate, and the Chair asked all of the questions Ms. Eddy requested (CP 371, 431);

- She was allowed to call witnesses on her behalf (CP 267, 425);
- She was given a 10-minute break during the hearing to compose her thoughts (CP 443, 445);
- She was allowed to make a closing statement to the Conduct Board (CP 372, 433-34);
- She was allowed to have an advisor present throughout the Conduct Board hearing and received the benefit of a staff advisor who is experienced with the student conduct process (CP 267, 369; CP 520-527/Appendix A); and
- She was allowed to appeal the Conduct Board's decision, which afforded her a full review by the Appeals Board (CP 216, 152, 458).

Despite this case law, Ms. Eddy argues that use of a BAP was not appropriate because the “issues and interests” at stake warranted a formal adjudicative proceeding. Appellant’s Br. at 10-13 (citing RCW 34.05.482). To support this claim, she cites the Model Administrative Procedure Act of 1981 (Model Act). In particular, Eddy cites RCW 34.05.001 for the proposition that the legislature intended the Model Act to define the terms “issue” and “interests.” In RCW 34.05.001, the legislature did note that one of its hopes in passing Washington’s APA was that “courts should interpret provisions of this chapter consistently with decisions of other courts interpreting *similar* provisions of other

states, the federal government, and model acts.” RCW 34.05.001 (emphasis added). However, there is no model act or foreign jurisdiction creating a BAP like the one that exists in Washington State, nor is there one with language similar to that found in RCW 34.05.482(d).

Had Washington’s legislature wanted to adopt the standards set forth in the Model Act for what it calls informal adjudications, it could have adopted the Model Act’s language full cloth as it did in other sections. *E.g., compare* RCW 34.05.050 (“Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter.”) *with* Model Act, Art. 1 § 1-105 (1981) (same). Instead, the legislature adopted its own, different procedure in the BAP. This was a new and innovative procedure based only *in part* on the provisions of the Model Act. William R. Andersen, *The 1988 Washington Administrative Procedure Act—An Introduction*, 64 Wash. L. Rev. 781, 818 (1989).

It is also clear that the legislature knew how to require a formal adjudicative proceeding for certain “issues” or “interests” that it deemed were not fit for a BAP. In the 1988 APA, for example, the legislature exempted “public assistance and food stamp programs provided for in Title 74 RCW” from BAPs. RCW 34.05.482 (1988) (amended in 1998 to add the phrase “benefit programs” under Title 74). In the initial draft of

Washington's APA as proposed in 1988, no such language existed. Washington State Senate Journal (1988) p. 987. However, after a conference with the House of Representatives, the final bill included the language exempting Title 74 benefits from BAPs. *Id.* at 1411. For all other "issues" or "interests" the legislature left it to the agencies to decide when it is appropriate to use a BAP.

Ms. Eddy points to two interests she claims were at stake in the student conduct proceedings that were so important that the APA required WSU to abandon its BAP. First, Eddy cites *Nieshe v. Concrete Sch. Dist.*, 129 Wn. App. 632 (2005) for the proposition that her "fundamental interest" in her reputation was at stake in the proceedings. Appellant's Br. at 12. Although *Nieshe* supports Eddy's contention that her reputation was arguably an interest at stake, it does not stand for the proposition that a BAP cannot adequately protect this interest. In fact, *Nieshe* does not even contemplate the APA or adjudicative hearings. In *Nieshe*, a student who was excluded from her high school graduation ceremony sued the school district under 42 U.S.C. § 1983. *Nieshe*, 129 Wn. App. at 635. The *Nieshe* Court ruled in the school district's favor, finding that attending a high school graduation was not a federally protected right. *Id.* at 640. Although the court did note that a person's liberty interest may be implicated where a person's reputation is affected by government action, it

certainly did not hold that a person has a “fundamental” interest in her reputation that must be protected by the panoply of rights inherent in a formal adjudicative proceeding. Rather, the *Nieshe* court, applying due process jurisprudence, failed to find any protected interest the plaintiff had in attending her graduation, including one in her reputation. *Id.* at 640-45. Moreover, reputation cannot possibly be an “interest” that prohibits the use of a BAP; if this were so, no government action taken against a person could use a BAP because it would presumably affect that person’s reputation.

Eddy also argues that her First Amendment interest of travel was implicated by the trespass order initially imposed. Appellant’s Br. at 12. But trespassing a person from university property for violation of university policy does not implicate a person’s right to travel. *See People v. Leonard*, 62 N.Y.2d 404, 410, 465 N.E.2d 831, 835 (1984) (“It cannot be said that excluding from college campuses individuals who have flouted basic rules of order implicates the broad concept of freedom of movement embraced in this constitutional right . . . .”) (citation omitted). There is no constitutionally protected interest in accessing a university. *Souders v. Lucero*, 196 F.3d 1040, 1046 (1999). Therefore, universities maintain the right to exclude individuals from their campuses. *Souders*, 196 F.3d at 145-46. However, even assuming Eddy maintains some

interest in access to WSU property, she points to no case law to support her argument that such interest is one that WSU's BAP does not adequately protect. Regardless, the issue is moot given WSU's removal of Eddy's trespass shortly after the Appeals Board denied her appeal and therefore should not be given consideration by this Court. *See Hart v. Dep't of Soc. and Health Servs.*, 111 Wn.2d 445 (1988) (declining to review moot action of agency).

As discussed above, WSU's BAP includes robust and fair procedures that adequately protect a student's rights in a student disciplinary proceeding. In addition, the institution has a strong interest in employing a BAP. For instance, an adjudicative proceeding under the APA sections RCW 34.05.410-.4791 requires specialized training of participants, employment of attorneys, and added process, all which add cost and slow the procedure. *See CP 520-527/Appendix A at 2* (listing consequences of employing formal adjudicative proceedings in student conduct cases). In some cases, a lengthy and drawn out procedure potentially violates other mandates a university is charged to comply with, such as Title IX, which requires prompt investigation and resolution of cases involving sexual assault or harassment. *See Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, U.S. Dep't of Educ. (April 4, 2011)* (stating 20 U.S.C. §§ 1681 *et seq.* (Title IX) requires prompt resolution of

sexual harassment/assault cases in student conduct proceedings; suggesting 60 days as an average timeline for a university to complete an investigation and render an initial decision). Finally, in WSU's case, the use of that more formal process would detract from the overall purposes of the conduct procedure. *See, e.g.*, WAC 504-26-001 (stating that the procedure should be educational, nonadversarial, and designed to protect the community).

Washington's APA purposefully allows significant flexibility to agencies in administering adjudicatory proceedings; absent extraordinary circumstances, a court should not second guess an agency's decision on the process employed. *See Bowers v. Pollution Control Hearings Bd.*, 103 Wn. App. 587, 613 (2000) (discussing different courts' refusal to second guess agency decision making). Washington agencies chose to utilize BAPs to adjudicate a diverse and vast number of interests. *E.g.*, WAC 326-08-011 (minority and women's business certifications), WAC 192-35-080 (state contracts for persons with disabilities), and WAC 314-42-110 (liquor licenses). BAPs are commonly used to revoke a person's business or professional license. *E.g.*, WAC 308-12-345 (architect license), WAC 196-09-050 (engineering licenses), and WAC 308-124-305 (real estate broker's license). Thus, BAPs are used in

other contexts to adjudicate important interests, including those that significantly impact a person's livelihood.

Finally, Ms. Eddy argues that she would be entitled to more procedural rights if she received a parking ticket. Appellant's Br. at 15. This is wholly inaccurate. WSU utilizes a BAP to adjudicate parking tickets just as it does student conduct issues, only with much less defined process and without the aid of an advisor. *Compare* WAC 504-15-860 (parking ticket procedure) *with* WAC 504-26-403 (student conduct procedure).

**5. Ms. Eddy Is Not Entitled To Relief Because She Does Not Show That WSU's Use Of A BAP In Her Student Conduct Proceeding Caused Her Substantial Prejudice**

As noted above, "[A] court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of." RCW 34.05.570(1)(d). The party seeking relief bears the burden of proving substantial prejudice. *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 217 (2007). Here, the record clearly demonstrates Ms. Eddy was given substantial due process that sufficiently protected her interests and provided "fundamentally fair procedures" to determine whether misconduct occurred. However, even if she could demonstrate that WSU erred by using a BAP, she has not shown that it

substantially prejudiced her in light of the significant due process she received and in light of the overwhelming evidence against her.

By the time the July 9, 2014, Conduct Board hearing was held, it was undisputed that the Academic Integrity Board previously found Ms. Eddy in violation of academic integrity on two separate occasions. Thus, the Conduct Board's sole responsibility at the July 9 hearing was to issue a sanction for those violations, not to re-hear the underlying facts of the violations. The recommended sanction in such situations is expulsion. WAC 504-26-404(4). Therefore, even absent the additional allegation that Ms. Eddy provided false information to the Appeals Board at a previous hearing, Ms. Eddy would have faced the sanction of expulsion from WSU for her second academic integrity violation alone.<sup>7</sup>

Furthermore, in determining whether Ms. Eddy previously provided false or doctored information to the Appeals Board, the Conduct Board reviewed a substantial amount of evidence, including WSU police reports, scores of emails, several audio and video files that Ms. Eddy provided, testimony of Ms. Eddy's witness Professor Crandall, unsworn statements of supposed fact witnesses provided by Ms. Eddy, and the testimony of Ms. Eddy herself. It was based on this substantial record of

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<sup>7</sup> In addition, Ms. Eddy could have faced expulsion for violating her probation had she not been expelled by the Conduct Board after the July 9, 2014, hearing. WAC 504-26-405(b).

information that the Conduct Board found that Ms. Eddy engaged in an “amateurish attempt to mislead the Board” by submitting a falsified recording; that Ms. Eddy lied to the Conduct Board by submitting an email from a fictitious “Joe Roman” that itself contradicted information Ms. Eddy provided to the Conduct Board; and that Ms. Eddy submitted false materials to OSC on multiple occasions. In addition, the Conduct Board and the Appeals Board were allowed to consider Ms. Eddy’s three previous disciplinary matters in deciding on her sanction. WAC 504-26-405(3)(a).

Under these circumstances, Ms. Eddy cannot establish that the Conduct Board’s decision or the Appeals Board’s decision to dismiss her from WSU would have been different had a formal adjudicative proceeding been conducted. Ms. Eddy simply fails to point to any procedure provided in a formal adjudicative proceeding that would have assisted her here. Consequently, Ms. Eddy fails to meet her burden of showing that she was substantially prejudiced by the use of a BAP in her case, and her appeal should be denied.

**6. Ms. Eddy Is Not Entitled To Attorney Fees On Appeal**

Under the Washington Equal Access to Justice Act, RCW 4.84.350, attorney fees may be awarded to a qualifying prevailing party. A qualified party “prevails” if it obtains “relief on a significant

issue that achieves some benefit” that the party sought in the judicial review proceeding. RCW 4.84.350(1). The prevailing party threshold is not met unless the party prevails on a substantial part of the litigation and is awarded some relief on the merits. 32 Am. Jur. 2d *Federal Courts* §§ 321-322 (1995 & Supp. May 2005). In *Citizens for Fair Share v. Dep’t of Corr.*, 117 Wn. App. 411, 72 P.3d 206 (2003), *review denied*, 150 Wn.2d 1037 (2004), for example, no fees were awarded when the private litigant prevailed on one minor public disclosure violation. Here, even if the Court determines that Ms. Eddy did not waive her appeal, WSU erred in not employing a formal adjudicative proceeding, and Ms. Eddy was substantially prejudiced by this error, the remedy would be to remand the case to WSU for formal adjudicative proceeding. RCW 34.05.554(2). This remedy, however, would not qualify Ms. Eddy as a prevailing party under RCW 4.84.350 or RAP 18.1. *See Ryan v. Dep’t of Soc. and Health Servs.*, 171 Wn. App. 454, 476 (2012) (holding that a party awarded a new hearing on remand was not a prevailing party because the party had not yet prevailed on the merits).

Additionally, fees and other expenses cannot be awarded if the “agency action” is “substantially justified.” RCW 4.84.350(1); *Aponte v. Dep’t of Soc. & Health Servs.*, 92 Wn. App. 604, 623, 965 P.2d 626 (1998). The agency’s failure to prevail does not create a presumption that

its position was not substantially justified. *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir. 1988). The government's position is substantially justified, even though it is ultimately found to be incorrect, if the question of statutory interpretation is a close one. See *Honesty in Envtl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 535-36, (1999); *Johnson v. U.S. Dep't of Hous. & Urban Dev.*, 939 F.2d 586 589-590 (8th Cir. 1991).

In this case, Ms. Eddy should not be deemed a prevailing party and should not be awarded any attorney fees.

## V. CONCLUSION

WSU provided Ms. Eddy with a significant amount of process that more than adequately protected her interests, while also protecting the University community and the University's interests by efficiently adjudicating the matter without the expense and disruption of a formal adjudicative proceeding.

Ms. Eddy waived her right to contest WSU's use of a BAP by not raising the issue during the proceedings below. Even if she had raised the issue, however, WSU is not required by the APA or its own rules to provide a formal adjudicative proceeding in a student conduct proceeding. Finally, Ms. Eddy fails to show how any additional procedures would

have changed the outcome of the student conduct process. For all of these reasons, her appeal should be denied.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of September, 2015.

ROBERT W. FERGUSON  
*Attorney General*



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DANIELLE A. HESS, WSBA #22307  
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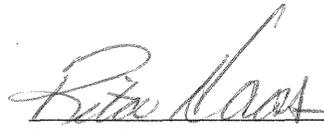
**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Steve Martonick  
Martonick Law Office  
207 East Main Street  
Pullman, WA 99163  
*By personal delivery*

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of September, 2015, at Pullman, Washington.

  
\_\_\_\_\_  
RITA HAAS  
Legal Administrative Manager

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APPENDIX A  
Amended

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STATE OF WASHINGTON  
WHITMAN COUNTY SUPERIOR COURT

EILEEN EDDY,

Petitioner,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

NO. 14-2-00214-7

DECLARATION OF ADAM JUSSEL

STATE OF WASHINGTON )  
County of Whitman ) ss.

I, Adam Jussel, state that:

1. I am an Assistant Dean of Students and the Director of the Office of Student Conduct at Washington State University (WSU). I have held these positions since October 2014 and August 2013, respectively. I also serve as one of WSU's University Conduct Officers.

2. The student conduct process is governed by many measures to protect students' due process rights, while at the same time requiring their active participation as the consumers of their own education. As a conduct officer, my primary role is that of an educator. The majority of my time is spent mentoring students who have committed acts of misconduct in an attempt to foster students' personal development. When I meet with students, I spend a lot of time focusing them on reflecting on their mistakes in the hope that when they are faced with a

1 similar situation, they will know how to better respond. To further this goal, I might assign a  
2 student an educational reflection paper that focuses on moral development, a research paper on  
3 a pertinent topic, or other sanctions that guide her development.

4 3. In 2014, we processed nearly 2,800 conduct matters. Most of these cases  
5 resulted in a brief educational intervention (e.g., reflection papers, courses on alcohol and drug  
6 abuse, etc.) and mentoring by conduct officers. Less than 2% of those cases were referred to  
7 the Conduct Board, and less than 1% of the total cases resulted in expulsion. Only the most  
8 severe or repeated cases are referred to the Conduct Board. The remainder are processed by  
9 conduct officers (myself, our Associate Director, and our two graduate students) and result in  
10 minor educational sanctions.

11 4. Requiring WSU to use a formal adjudicative proceeding for conduct cases  
12 would not benefit students and would place a significant burden on WSU. The current process,  
13 on the other hand, encourages students to speak on their own behalf and personally engage in  
14 the learning process that occurs as a result of their matriculation through a campus conduct  
15 process. Moreover, shifting to formal adjudicative proceedings would require WSU to invest  
16 significant financial and personnel resources into the training for hearing boards and conduct  
17 officers, and the University would have to hire lawyers specifically to prosecute conduct cases.  
18 These increased costs would ultimately fall on the taxpayers or students through increased  
19 tuition and fees. Allowing attorneys to fully represent students could also disparately impact  
20 students without the financial means to acquire and pay for attorneys. Similarly, it could create  
21 an inequity that might ultimately have to be corrected by the University, possibly by having to  
22 provide the equivalent of defense counsel free of charge. In addition, victims of trauma (such  
23 as sexual assault victims, etc.) might shy away from participating in the conduct process  
24 because they know they cannot afford an attorney and/or do not want to be cross-examined by  
25 an attorney.  
26

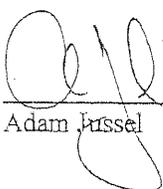
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16<sup>th</sup> day of February, 2015, at Pullman, Washington.

  
\_\_\_\_\_  
Adam Jusel

**WASHINGTON STATE ATTORNEY GENERAL**

**October 26, 2015 - 11:49 AM**

**Transmittal Letter**

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Case Name: Eileen Eddy v. Washington State University

Court of Appeals Case Number: 33282-9

Party Represented: Washington State University

Is This a Personal Restraint Petition?  Yes  No

Trial Court County: \_\_\_\_\_ - Superior Court # \_\_\_\_\_

**Type of Document being Filed:**

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Response/Reply to Motion: \_\_\_\_\_
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: Filing of amended Appendix A

**Comments:**

No Comments were entered.

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