

**FILED**

No. 347915

MAY 01 2017

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

---

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

---

QUINCY MARIN,

Appellant,

vs.

SPOKANE PUBLIC SCHOOLS NO. 81,

Respondent.

---

**SCHOOL DISTRICT'S ANSWER TO *AMICUS CURIAE* BRIEF**

---

Gregory L. Stevens, WSBA #15627  
Stevens Clay, P.S.  
421 W. Riverside, Suite 1575  
Spokane, WA 99201  
Tel: (509) 838-8330  
Fax: (509) 623-2131  
E-Mail: [gstevens@stevensclay.org](mailto:gstevens@stevensclay.org)  
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. INTRODUCTION .....1

II. ARGUMENT.....3

A. RCW 28A.645.030 does not Require this Court to Apply *De Novo* Review.....3

B. Heightened Scrutiny Should not be Applied to Appellant’s Suspension from Lewis and Clark.....5

1. Appellant was not a child under Art. IX, § 1 when he was long-term suspended.....7

2. Review of discipline decisions should be based on the disciplinary regulations.....8

3. The traditional levels of scrutiny are not appropriate in positive-right context.....10

4. The District did not infringe upon any right that Appellant had; therefore, a heightened level of scrutiny isn’t required.....11

C. Exceptional Misconduct is not the Only Exception to Progressive Discipline.....12

E. Appellant’s Threatening Behavior did not Have to be a “True Threat” to be Exceptional Misconduct.....15

III. CONCLUSION.....19

## TABLE OF AUTHORITIES

### Cases

<i>Board of Educ. of Rogers, Ark. v. McCluskey</i> , 458 U.S. 966, 102 S.Ct. 992 .....	17
<i>Briggs v. Seattle Sch. Dist. No. 1</i> , 165 Wn. App. 286, 266 P.3d 911 (2011) .....	11
<i>Citizens Against Mandatory Bussing v. Palmason</i> , 80 Wn.2d 445, 495 P.2d 657 (1972) .....	11
<i>City of Walla Walla v. \$401,333.44</i> , 164 Wn. App. 236, 262 P.3d 1239 (2014) .....	4
<i>C.R. Eugene Sch. Dist. 4J</i> , 835 F.3d 1142 (9th Cir. 2016) .....	17
<i>Currier v. Northland Services, Inc.</i> , 182 Wn. App. 733, 332 P.3d 1006 (2014) .....	4
<i>McCleary v. State</i> , 173 Wn.2d 477, 269 P.3d 227 (2012) .....	<i>passim</i>
<i>Mains Farm Homeowners Ass'n v. Worthington</i> , 121 Wn.2d 810, 854 P.2d 1080 (1993) .....	5
<i>Mairs v. Dep't of Licensing</i> , 70 Wn. App. 541, 854 P.2d 665 (1993) .....	3
<i>Potter v. Dep't of Labor and Indus.</i> , 172 Wn. App. 301, 289 P.3d 727 (2012) .....	3
<i>Quinlan v. University Place Sch. Dist. 83</i> , 34 Wn. App. 260, 660 P.2d 329 (1983) .....	12
<i>Seattle Sch. Dist. No. 1 v. State</i> , 90 Wn.2d 476, 585 P.2d 71 (1978) .....	7, 8

<i>State v. Froelich</i> , 197 Wn. App. 831, 391 P.3d 559 .....	4
<i>State v. Trey M.</i> , 186 Wn.2d 884, 383 P.3d 474 .....	14
<i>State v. Williams</i> , 144 Wn.2d 197, 26 P.3d 890 (2001) .....	15
<i>Tunstall ex rel. Tunstall v. Bergson</i> , 141 Wn.2d 201, 5 P.3d 691 (2000) .....	<i>passim</i>
<i>Wood v. Strickland</i> , 420 U.S. 308, 95 S.Ct. 992 (1975) .....	17

**Constitutional Provisions**

Wash. Const. art. IX, § 1 .....	<i>passim</i>
---------------------------------	---------------

**Statutes**

RCW 28A.600.015 .....	6
RCW 28A.600.020 .....	17
RCW 28A.645.030 .....	3
RCW 46.20.334 .....	4
RCW 51.52.115 .....	3

**Regulations**

WAC 180-40-260 .....	12, 13
WAC 392-400-260 .....	<i>passim</i>
WAC 392-400-275 .....	14

**Other**

Wash. St. Reg. 85-09-058 .....12, 13

## I. INTRODUCTION

The American Civil Liberties Union spends a great deal of its amicus brief making public policy arguments about the negative effects of exclusionary discipline. Spokane Public Schools (the “District”) and its Board of Directors (the “School Board”) agree that exclusionary discipline can negatively affect students. That’s why the School Board did not impose exclusionary discipline on Appellant when it upheld his suspension from Lewis and Clark High School for the first semester. Rather, the School Board immediately reinstated Appellant into the District allowing him to attend any high school other than Lewis and Clark (for the first semester) or to access special school district programs that would allow him to accelerate his opportunity to gain credits and graduate from high school. CP 21. (Unfortunately, Appellant chose not to accept the School Board’s offer, choosing instead to exclude himself from the District’s educational services. Decl. of Daniel Close.)

Moreover, the same school board that upheld Appellant’s exclusion from Lewis and Clark also adopted and supported Policy 3240 which emphasizes restorative practices and implementation of positive behavioral interventions and support: “The Board . . . believes that positive and preventative behavior systems, such as Positive Behavioral Interventions and Supports (PBIS) or social emotional learning are . . .

valuable methods to affirmatively teach students behavioral expectations, recognize positive behavior, and provide additional supports or interventions for students who struggle to meet those expectations.”<sup>1</sup>

However, the School Board’s commitment to restorative practices and positive behavioral interventions does not obviate its coextensive responsibility to maintain a safe and appropriate learning environment for students and staff. Suspensions and expulsions remain a necessary and viable corrective action tool that must be available to ensure an appropriate educational environment. Appellant’s threatening behavior undermined the respect and authority that is needed to ensure an appropriate educational environment, justifying the School Board’s decision to uphold his long-term suspension from Lewis and Clark.

Of course, there are other aspects of the ACLU’s amicus brief with which the School District strenuously disagrees. First, de novo review is not required in this case because RCW 28A.645.030 does not require it, and because Appellant also brought this case under the authority of the declaratory judgment statute. Second, this Court should not address the ACLU’s heightened scrutiny argument because it raises an issue that neither party has raised. Third, if this Court were to address the ACLU’s

---

<sup>1</sup> See <https://weba.spokaneschools.org/polpro/View.aspx?id=635>.

heightened scrutiny assertion, the argument misunderstands when that standard is appropriately applied, and thus, the argument should be rejected. Fourth, the ACLU's interpretation of the student-discipline regulations urged upon this Court is faulty because it belies common sense when the student-discipline regulations are read in their entirety. Finally, this Court should not read the "true threat" standard into the District's policy because doing so is not legally required and it does not comport with the actual language of the policy.

## II. ARGUMENT

### A. RCW 28A.645.030 does not Require this Court to Apply De Novo Review.

RCW 28A.645.030 states that an appeal of a school board decision "shall be heard de novo by the *superior court*." (emphasis added). The statute does not address the applicable standard of review before the Court of Appeals. As discussed in the District's response brief, judicial authority has not articulated the appropriate standard of review that courts of appeals apply in cases brought under chapter 28A.645 RCW. Response Brief at 14-15. But under other statutes that require the superior court to review agency decisions *de novo*, appellate courts have reviewed superior court findings of fact to see if they are based on substantial evidence and conclusions of law *de novo*. *E.g., Potter v. Dep't of Labor and Indus.*, 172

Wn. App. 301, 310, 289 P.3d 727, 731-32 (appeal brought under RCW 51.52.115); *Mairs v. Dep't of Licensing*, 70 Wn. App. 541, 545-46, 854 P.2d 665, 668 (1993) (appeal brought under RCW 46.20.334). The same standard of review applies here.

The ACLU urges this Court to apply a *de novo* standard of review because of the importance of education in Washington. The District agrees that education is of great importance, but fails to see how that has any bearing on the standard of review this Court should apply. Even in criminal cases, where important liberty interests are involved, the standard of review is not based on the importance of the interest at stake. Rather, review is based on whether the appellate court is reviewing factual or legal issues, factual issues being reviewed under a substantial evidence standard and legal issues being reviewed *de novo*. *See e.g., State v. Froehlich*, 197 Wn. App. 831, 391 P.3d 559, 563 (2017). Thus, the District respectfully submits that Appellant's claim should be treated as any other claim on appeal: legal issues are to be reviewed *de novo* while factual issues should be reviewed under the substantial evidence standard.<sup>2</sup>

---

<sup>2</sup> When it comes to factual issues, appellate courts are particularly careful to refrain from substituting their judgment for those of the fact finder, recognizing that the fact finder is "in a better position to make credibility determinations" and weigh conflicting testimony. *Currier v. Northland Services, Inc.*, 182 Wn. App. 733, 741, 332 P.3d 1006, 1010 (2014); *see City of Walla Walla v. \$401,333.44*, 164 Wn. App. 236, 256, 262 P.3d 1239, 1249 (2011). Thus, it does not seem appropriate for this Court to substitute its judgment for that of the School Board and the hearing officer—who heard live testimony, made

It is also worth recalling that Appellant brought two causes of action in superior court: one appealing the School Board’s decision to uphold his long-term suspension; the other seeking declaratory judgment and compensatory education. CP 1, 3. The former was brought under chapter 28A.645 RCW; the latter under the Uniform Declaratory Judgment Act (chapter 7.24 RCW). The Uniform Declaratory Judgment Act doesn’t require *de novo* review at any stage. Thus, the superior court’s denial of Appellant’s declaratory judgment claim, including his request for compensatory education, should be upheld as long as it was supported by substantial evidence.

**B. Heightened Scrutiny Should not be Applied to Appellant’s Suspension from Lewis and Clark.**

The ACLU asks this Court to determine whether decisions to suspend or expel are subject to heightened constitutional scrutiny. *See* Amicus Brief at 1. Neither the District nor Appellant has raised this issue. It has been “raised first and only” by the ACLU. However, courts of appeals “do not consider issues raised first and only by amicus.” *Mains Farm Homeowners Ass’n v. Worthington*, 121 Wn.2d 810, 827, 854 P.2d 1072, 1080 (1993). Thus, this Court should not consider whether heightened scrutiny applies to decisions to suspend and expel students.

---

credibility determinations, and found Appellant’s behavior threatening—which is exactly what the ACLU is asking it to do.

If this Court decides to entertain this issue, there are several reasons why heightened constitutional scrutiny is not warranted. First, the constitutional right to be amply provided an education only applies to children (those under the age of 18). Appellant was not a child when he was long-term suspended; thus, any right he had to receive an education did not flow from the Washington State Constitution.

Second, whether a suspension or expulsion is appropriate is based on the application of the regulations promulgated by the Office of the Superintendent of Public Instruction (OSPI), not on judicially created standards. The Washington State Constitution, under Art. IX, § 1, obligates the Legislature to give specific content to the word “education.” In fulfilling that duty, the Legislature has delegated rule making authority to OSPI to adopt disciplinary regulations that describe the substantive and procedural due process guarantees of students. OSPI has done so in chapter 392-400 WAC. Thus, the appropriateness of a decision to suspend or expel a student should be based on those regulations.

Third, the heightened level of scrutiny urged by the ACLU is applicable to negative rights, yet the ACLU’s argument relies on the positive constitutional right that children in Washington have to be amply provided with an education. Because the traditional levels of scrutiny that

apply to negative rights do not apply to positive rights, it is inappropriate to apply the heightened level of scrutiny that the ACLU asks for.

Finally, even if a heightened level of scrutiny did apply to disciplinary decisions, such scrutiny would not be triggered here because the District did not infringe upon any constitutional right Appellant had when it continued to offer him educational services during his long-term suspension from Lewis and Clark

**1. Appellant was not a child under Art. IX, § 1 when he was long-term suspended.**

The Washington State Constitution states, “It is the paramount duty of the state to make ample provision for the education of all *children* residing within its borders, without distinction or preference on account of race, color, caste, or sex.” Art. IX, § 1 (emphasis added). The Washington State Supreme Court has stated that this duty creates a correlative right for children in Washington to be amply provided with an education. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 512-13, 585 P.2d 71, 91-92 (1978). In determining who that right applies to, the Court has defined the term “children” in Art. IX, § 1 to include “individuals up to age 18.” *Tunstall ex rel. Tunstall v. Bergson*, 141 Wn.2d 201, 236, 5 P.3d 691, 710 (2000). Because Appellant was 18 when he was long-term suspended, he

had no right to be amply provided an education under the Washington State Constitution. CP 81, 88.

**2. Review of discipline decisions should be based on the disciplinary regulations.**

In Washington, the State has a constitutional duty to make ample provision for the education of all children. Const. art. IX, § 1. That duty requires the State to develop and implement a program of basic education and to fund that program. *McCleary v. State*, 173 Wn.2d 477, 521-29, 269 P.3d 227, 249-253 (2012). As a correlative right to the State's duty, children in Washington have a right to be amply provided with an education. *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 512-13, 585 P.2d at 91-92. The State has a duty to develop, implement and fund a basic educational program. This obligation gives students standing to compel the State to fund the program of basic education. *See Tunstall*, 141 Wn.2d at 236, 5 P.3d at 710 (Talmadge, J., concurring). But it does not give them an "individual right to a specific form of education." *Id.*

It is the Legislature's obligation to "give specific substantive content to the word [education] and to the program it deems necessary to provide that 'education' . . . ." *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 518-19, 585 P.2d at 95. As part of fulfilling that obligation, the Legislature has delegated to OSPI the authority to adopt disciplinary regulations that

prescribe “the substantive and procedural due process guarantees of pupils in the common schools.” RCW 28A.600.015(1). OSPI has done that, and the disciplinary regulations are found in chapter 392-400 WAC. The substantive due process rights that students have regarding discipline are found in that chapter. Likewise, any review of a school’s decision to discipline a student are to be based on the regulations in that chapter.

If the ACLU’s heightened or strict scrutiny constitutional analysis is adopted as the lens through which student discipline matters are reviewed, the District submits that courts would be turned into super school boards, constantly being asked to overturn district disciplinary decisions. The decision of whether a disciplinary action was actually the least intrusive means possible, i.e., whether 30 days versus 25 days was appropriate, would be subject to judicial heightened or strict scrutiny analysis. This is contrary to the judiciary’s well-established decision to leave the minutiae of education to the Legislature and local school districts: “As [the Supreme Court] has often held, it is not this court’s role to micromanage education in Washington.” *Tunstall*, 141 Wn.2d at 223, 5 P.3d at 702.

**3. The traditional levels of scrutiny are not appropriate in the positive-right context.**

In *McCleary*, the Washington State Supreme Court distinguished between negative and positive constitutional rights: negative rights protect individuals from the government overstepping its constitutional authority; whereas, positive rights “do not restrain government action; they require it.” *McCleary v. State*, 173 Wn.2d at 518-19, 269 P.3d at 247-48. When analyzing negative constitutional rights, courts ask “whether the legislature or the executive has overstepped its authority under the constitution,” policing “the outer limits of government power” by “relying on the constitutional enumeration of negative rights to set the boundaries.”

*Id.* However,

[T]his approach ultimately provides the wrong lens for analyzing positive constitutional rights, where the court is concerned not with whether the State has done too much, but with whether the State has done enough. . . . The typical inquiry whether the State has overstepped its bounds therefore does little to further the important normative goals expressed in positive rights provisions. Moreover, federal limits on judicial review such as the political question doctrine or rationality review are inappropriate. Instead, in a positive rights context we must ask whether the state action achieves or is reasonably likely to achieve the constitutionally prescribed end.

*Id.* (quotation marks and internal citations omitted). Thus, as implied in the Court’s decision, the traditional levels of scrutiny are not applicable in the positive-right context. Since the right to be amply provided with an

education is a positive right, it is inappropriate to apply the heightened level of scrutiny that the ACLU asks this Court to apply. *See Id.*

**4. The District did not infringe upon any right that Appellant had; therefore, a heightened level of scrutiny isn't required.**

There is no reason to apply heightened scrutiny to the School Board's decision to uphold Appellant's exclusion from Lewis and Clark because, under any interpretation of Art. IX, § 1, the District did not infringe upon Appellant's right to be provided an education. *Tunstall*, 141 Wn.2d at 225-26, 5 P.3d at 704 ("It is clear . . . that infringement of a fundamental right *is* a legal requirement to applying strict scrutiny review."). Even though Appellant may have been excluded from Lewis and Clark High School, the District offered him the opportunity to receive educational services at another school or through programs such as the Open Doors and Gateway to College programs.<sup>3</sup> CP 21; Decl. of Daniel Close. Any constitutional right Appellant had to an education was met by the District. The District provided Appellant with several appropriate educational options. Two of these options, Open Doors and Gateway to College, specifically provided Appellant with an accelerated opportunity

---

<sup>3</sup> Appellant had no right to attend "any particular public school." *Citizens Against Mandatory Bussing v. Palmason*, 80 Wn.2d 445, 453, 495 P.2d 657, 663 (1972); *accord.*, *Briggs v. Seattle Sch. Dist. No. 1*, 165 Wn. App. 286, 295, 266 P.3d 911, 915 (2011) ("No person has a right to have their child attend at a particular school building.").

to retrieve high school credits and more quickly obtain his purported goal of a high school diploma.

**C. Exceptional Misconduct is not The Only Exception to Progressive Discipline.**

WAC 392-400-260(2) states: “As a general rule, no student shall be suspended for a long term unless another form of corrective action reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.” The ACLU argues that there is only one exception to this general rule: exceptional misconduct. However, the ACLU’s interpretation of WAC 392-400-260 is inconsistent with the State Board of Education’s purpose in adding the exceptional-misconduct exception.

The exceptional-misconduct exception was added to WAC 180-40-260 (the forerunner to WAC 392-400-260) to clarify “the establishment and imposition of *predetermined* penalties” in response to *Quinlan v. University Place Sch. Dist.*, 34 Wn. App. 260, 660 P.2d 329 (1983) (emphasis added). Wash. St. Reg. 85-09-058 at 100. In *Quinlan*, the court held that the school could not impose a “predetermined fixed penalty” because the disciplinary regulations in effect at the time required discipline to “be related to the individual student.” *Quinlan*, 34 Wn. App. at 263-65, 660 P.2d at 330-31. So in response to *Quinlan* and school

district's requests for greater discretion, the Board of Education added the exceptional- misconduct exception to WAC 180-40-260, allowing schools to establish predetermined, fixed penalties for serious first-time offenses without considering the nature and circumstances of a particular student's violation. Wash. St. Reg. 85-09-058 at 100.

By adding the exceptional-misconduct exception, the Board of Education intended to create an exception to the requirement that the nature and circumstances of an individual student's violation must be considered and must reasonably warrant long-term suspension. *See* WAC 180-40-260(1); WAC 392-400-260(1). Contrary to the argument posed by the ACLU, the Board of Education did not intend to make exceptional misconduct the only exception to the use of progressive discipline.

If it had intended exceptional misconduct to be the only exception, it would have worded the regulation much differently. Rather than adding the phrase "as a general rule" to WAC 180-40-260, it would have simply stated that long-term suspension could be imposed only if prior attempts to use alternative corrective action had been made and then added a proviso allowing for immediate resort to long-term suspension for exceptional misconduct (this is the common and accepted way of drafting a rule and a single exception to that rule). The Board of Education didn't do that. Rather, it added the phrase "as a general rule" to give schools discretion in

situations where the nature and circumstances of a student's violation reasonably warranted long-term suspension even though progressive discipline hadn't been used and there was no exceptional misconduct. *See* WAC 392-400-260(1) (allowing schools to long-term suspend students as long as the "nature and circumstances of the violation [are] considered and [they] reasonably warrant a long-term suspension").

The District's interpretation is consistent with the overall student-discipline scheme. At all times relevant to this case, an expulsion was the most severe form of disciplinary action. The expulsion regulation allows schools to expel a student if "there is good reason to believe that other forms of corrective action would fail if employed." WAC 392-400-275. There is no requirement that prior discipline be imposed. There is no requirement that student conduct be exceptional. Indeed, there is no provision for exceptional misconduct within the expulsion regulations. Rather, the decision is left to the discretion of school officials as to whether an expulsion is warranted.

According to the ACLU's interpretation of WAC 392-400-260(2) though, a school could expel a student even if it hadn't attempted prior correction action and there was no exceptional misconduct, but could not impose a lesser form of corrective action—long-term suspension. This is an unwarranted and absurd result. If a student can be expelled for certain

conduct it must follow that a school district may impose a lesser punishment of a long-term suspension for the same behavior. The District's interpretation of WAC 392-400-260(2) allows for this common sense result.<sup>4</sup>

Appellant's conduct was properly regarded as exceptional misconduct in accordance with District policy. However, even if this were not true, the School Board was justified in upholding Appellant's long-term suspension as long as the nature and circumstances of his behavior reasonably warranted a long-term suspension or the School Board had good reason to believe that no other forms of corrective action would work. Under either standard, Appellant's long-term suspension was justified.

**D. Appellant's Threatening Behavior did not Have to be a "True Threat" to be Exceptional Misconduct.**

The ACLU assumes that in order for Appellant's threatening behavior to be exceptional misconduct under the District's policy, it must have risen to the level of a "true threat." The ACLU is importing a true threat standard into the District's rule preventing threats to staff. It justifies

---

<sup>4</sup> Additionally, the ACLU forgets that Appellant was initially expelled for his threatening behavior, and the School Board converted his expulsion to a less-severe form of corrective action. Thus, if the ACLU's interpretation of WAC 392-400-260(2) is adopted, then the School Board would have been allowed to impose an expulsion on Appellant but had to meet a more stringent standard to reduce his expulsion to a long-term suspension.

doing this by stating that the District’s definition of “threats of violence or harm” is similar to the standard courts apply in determining whether a statement is a “true threat.” This is simply not true.

The District defines “threats of violence or harm” as “communications that create reasonable fear of physical harm to a specific individual or individuals, communicated directly or indirectly by any means.” Response Brief App’x A at 12. The Washington State Supreme Court has defined a “true threat” as “a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another individual.” *State v. Trey M.*, 186 Wn.2d 884, 894, 383 P.3d 474, 478 (2016) (quoting *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890, 896 (2001)) (internal quotation marks and alterations omitted). As is apparent, these definitions have significant differences.

First, the District’s definition focuses on the individual being threatened; whereas, the “true threat” definition focuses on the individual doing the threatening. Second, the District’s definition looks at whether an individual’s communication created a *reasonable fear* of physical harm; whereas, the “true threat” definition looks at whether an individual could reasonably foresee their statement being interpreted as a *serious*

*expression of an intent* to inflict bodily harm. This difference is critical because an individual's communication could create a reasonable fear of physical harm without the individual foreseeing the communication being interpreted as a serious expression of an intent to inflict bodily harm. Lastly, the District's definition applies to communications that are "communicated directly or indirectly by any means." Whereas the "true threat" definition appears to limit true threat's to statements. Given these differences, there is no justification for importing the true threat standard into the District's definition of "threats of violence or harm."

Moreover, the School Board's "interpretation of its own rules and policies" is given "significant deference." *C.R. Eugene Sch. Dist. 4J*, 835 F.3d 1142, 1148 (9th Cir. 2016). In fact, the United States Supreme Court has insisted that a court cannot reject a school board's interpretation of its own policy simply because the court disagrees with that interpretation. *See Board of Educ. of Rogers, Ark. v. McCluskey*, 458 U.S. 966, 968-71, 102 S.Ct. 3469, 3471-72 (1982); *Woodland v. Strickland*, 420 U.S. 308, 324-326, 95 S.Ct. 992, 1002-03 (1975). And in Washington, a school board's rules must be interpreted to ensure that "the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere." RCW 28A.600.020(1).

Clearly, the School Board has interpreted its rule regarding threats to staff in such a way that it does not require a “true threat” analysis. This is evidenced by the School Board finding that Appellant’s behavior was threatening: “[I]n looking at this event through the eyes of a reasonable administrator, the School Board can understand how Quincy’s actions, including profanity, posturing, and his agitated state, could be perceived as threatening.” CP 21. Unlike Appellant’s briefing, the ACLU acknowledges that Appellant made threats unrelated to the issue of “going to the School Board.” Amicus Brief at 13. The ACLU does, however, ignore other egregious examples of Appellant’s threatening behavior including his aggressive posturing, getting in the face of a school administrator, and his constant profane and intimidating speech. The School Board was certainly justified in finding that Appellant’s behavior met its definition of threat to staff. The School Board’s interpretation must be afforded significant deference. Thus, under the School Board’s interpretation of its own policy, Appellant’s threatening behavior was exceptional misconduct, warranting the School Board’s decision to uphold his long-term suspension.<sup>5</sup>

---

<sup>5</sup> Even though the District did not have to find that Appellant’s conduct rose to the level of a “true threat,” as the District has already shown, Appellant’s conduct did rise to the level of a “true threat.” Response Brief at 37-39.

### III. CONCLUSION

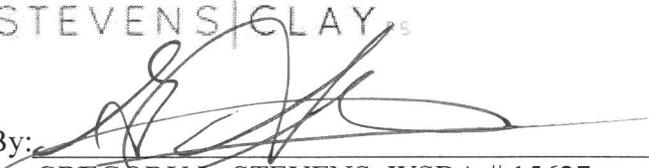
In reviewing the School Board's decision to uphold Appellant's exclusion from Lewis and Clark High School, legal issues should be reviewed *de novo* and factual issues should be reviewed under the substantial evidence standard, giving deference to the School Board's findings of fact and credibility determinations. Additionally, deference should be given to the School Board's interpretation of its own policy, and its determination of the discipline that was necessary to maintain an appropriate educational environment.

The District also asks this Court to adopt its interpretation of WAC 392-400-260(2). Exceptional misconduct is not the only exception to using prior alternative corrective action before long-term suspending a student. A school can immediately resort to long-term suspensions if after considering the nature and circumstances of a student's violation, long-term suspension is reasonably warranted, or if there is good reason to believe that other forms of corrective action won't work. Under either of these standards, the School Board's decision to uphold Appellant's suspension from Lewis and Clark was appropriate.

DATED this 1<sup>st</sup> day of May 2017.

Respectfully submitted,

STEVENS | CLAY<sup>es</sup>

By: 

GREGORY L. STEVENS, WSBA # 15627  
Attorneys for Spokane School District

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 18<sup>th</sup> day of May 2017, I served a true and correct copy of the above and foregoing SCHOOL DISTRICT'S ANSWER TO AMICUS BRIEF on the following, in the method indicated:

Daniel Ophardt  
Team Child  
1704 W. Broadway Ave.  
Spokane, WA 99208

- U.S. mail
- Overnight mail
- Hand-delivery
- Facsimile transmission
- Email transmission

Nancy Talner  
901 5<sup>th</sup> Avenue, Suite 630  
Seattle, WA 98164  
[talner@aclu-wa.org](mailto:talner@aclu-wa.org)

- U.S. mail
- Overnight mail
- Hand-delivery
- Facsimile transmission
- Email transmission

Nicole K. McGrath  
1455 NW Leary Way, Suite 400  
Seattle, WA 98107  
[Nicole@mcgrath.legal](mailto:Nicole@mcgrath.legal)

- U.S. mail
- Overnight mail
- Hand-delivery
- Facsimile transmission
- Email transmission

  
KIMBERLY N. REBER