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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

QUINCY MARIN,

Appellant,

v.

SPOKANE PUBLIC SCHOOLS NO. 81,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF

THE STATE OF WASHINGTON FOR SPOKANE COUNTY

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

"When *I* use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you *can* make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." Lewis Carroll, *Through The Looking Glass* at 205 (MacMillan 1934) (1872).

Spokane Public Schools (hereinafter "the District") asks this Court to trip through the looking glass and down its rabbit hole and concede to it total mastery over the terms of the law relevant to this appeal. The District wishes the Court to concede it virtually unfettered discretion. The District asks the Court to find that suspension means, in this case, just what the District wants it to mean, irrespective of definitions found in state regulations and the District's own procedures. The District asks this Court to find that specific regulatory limitations put on suspensions should not apply to it. The District is, if you follow its logic, master—that's all.

In the real world, the world of laws, it is clear that the District exceeded its authority when it upheld a 61-school-day long-term suspension for Quincy Marin's (hereinafter "Quincy") alleged threat to staff. In Washington, student discipline must be based on a school district rule, consistent with both state law and the rules adopted by the

Superintendent of Public Instruction. *See Quinlan v. Univ. Place Sch. Dist.*, 34 Wn. App. 260, 262, 660 P.2d 329 (1983). The District rule applicable to this matter allows, at most, a suspension of 10 days. Because the District violated its own rule, in addition to school discipline regulations and the First Amendment, this Court should overturn the long-term suspension and grant Quincy equitable relief, including compensatory education and attorney's fees.

A. **This Court should review this case *de novo*, sitting in the same position as the superior court.**

Appeals of school board actions are heard *de novo*. RCW 28A.645.010. In addition to the plain language of RCW 28A.645.010, *de novo* review is appropriate in this case because the Board acted in a quasi-judicial manner when it upheld Quincy's 61-day long-term suspension. *See Haynes v. Seattle Sch. Dist. No. 1*, 111 Wn.2d 250, 254-55, 758 P.2d 7 (1988). Because *de novo* review is "expressly authorized by provision of law" (i.e., RCW 28A.645.010), the Administrative Procedure Act does not apply to this case. *See* RCW 34.05.510(3).

Appellate courts review quasi-judicial administrative agency decisions *de novo* and review the record that was before the agency. *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 544, 359 P.3d 771 (2015). Further, this Court reviews the record available to the Board at the time of

its decision because the superior court did not see or hear new testimony, nor did it reconcile conflicting evidence. *See Goodeill v. Madison Real Estate*, 191 Wn. App. 88, 98, 362 P.3d 302 (2015). The Court of Appeals reviews the agency's decision rather than the superior court's decision. *See Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wn.2d 621, 627-28, 869 P.2d 1034 (1994).

Washington courts will overturn a school board's decision regarding school discipline. In *Quinlan v. Univ. Place Sch. Dist.*, the court vacated a long-term suspension because it was based on a policy that violated Washington Administrative Code (hereinafter "WAC") regarding long-term suspensions. 34 Wn. App. 260, 265, 660 P.2d 329 (1983). In this case, this Court should overturn Quincy's long-term suspension because the District violated WAC and its own rules regarding long-term suspensions, as well as the First Amendment.

B. <u>The District violated school discipline rules and Quincy's constitutional right to an education.</u>

1. Washington's "paramount" property right to a public education is considered one the strongest in the nation.

While some reasonable deference is given to educators for day-to-day discipline, courts must also take into account the strength of the student's right to an education. The Washington State Constitution and Washington statutes have guaranteed youth in Washington a uniquely

strong property right to public education, with unambiguous limits on disciplinary exclusion. *See* Const. art. IX, § 1; RCW 28A.150.220(5); RCW 28A.600.015 (2013) (amended 2016); WAC 392-400-260 (2014) (amended 2016).[1] Washington's constitutional property right to an education is considered to be one of the strongest state commitments to education. *See, e.g.,* Daniel Stallings, *Washington State's Duty to Fund K-12 Schools: Where the Legislature Went Wrong and What It Should do to Meet its Constitutional Obligation*, 85 Wash. L. Rev. 575, 575 (2010).

2. Even considering the reasonable deference due to the District, the District's 61-day suspension of Quincy violated unambiguous state discipline regulations and the District's own rules.

"Student discipline must be founded upon a rule of the school district which is consistent with state law and the rules and regulations of the Superintendent of Public Instruction and the State Board of Education." *Quinlan v. Univ. Place Sch. Dist.*, 34 Wn. App. 260, 262, 660 P.2d 329 (1983). RCW 28A.600.015(1) grants the Office of Superintendent of Public Instruction (hereinafter "OSPI"), the Washington

[1] Chapter 392.400 WAC (2014) is provided as Appendix W in Quincy's Brief of Appellant.

state agency overseeing public education, the authority to adopt rules prescribing the substantive and procedural due process guarantees of students in Washington public schools.[2] Pursuant to OSPI rules and the District's own rules, in order to long-term suspend Quincy, the District must have either previously imposed another form of discipline to correct similar behavior, or Quincy's behavior must have been "exceptional misconduct." *See* WAC 392-400-260(2) (2014) (amended 2016). The District must have defined "exceptional misconduct" through consultation with a citizen's committee. *Id.* The District does not argue that it previously imposed any form of discipline on Quincy for any behavior.

Though the District never argued that Quincy's behavior was "exceptional misconduct" at the school discipline hearing or Board appeal, it does so now. District's Response Brief at 25. However, it neglects to provide indispensable details while representing its own procedure to this Court. The District's "exceptional misconduct" procedure is comprised in a chart listing "serious behaviors" and their prescribed discipline. District's Response Brief, App. A, at 25. In that chart, the prescribed discipline for an "indirect threat" is a 10-day suspension. The prescribed discipline for a "severe threat" or "indirect threat 2nd offense" is an

[2] At the time of *Quinlan*, the State Board of Education shared rulemaking authority with OSPI pursuant to RCW 28A.04.132, but RCW 28A.600.015(1) now states that OSPI alone holds such authority.

expulsion or emergency expulsion. Nowhere in the District's procedure are "indirect threat" or "severe threat" defined. The District's exceptional misconduct procedure, in full, is:

C. Exceptional Misconduct:

1. The following behaviors have been deemed by the District, SEA, and members of a parent Ad Hoc Committee to be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school as to warrant an immediate resort to the identified prescribed consequences. Any record of exceptional misconduct will be kept in the student's cumulative file and forwarded to the next grade level K-12. (WAC 180-40-245 / WAC 180-40-260)

Serious Behaviors	**Short-Term Suspension**	**Long-Term Suspension**	**Expulsion/ Emergency Expulsion**	**Notification of Commissioned Law Enforcement Officer**
Firearms			1st Offense	✔
Use & Possession of Drugs/ Alcohol	1st Offense re-entry plan required	2nd Offense re-entry plan required	3rd Offense re-entry plan required	✔
Sale & Distribution of Drugs/ Alcohol			✔	✔
Assault Staff	K-2- 3-5 Days 3-6- 5 Days 7-12- 10 Days 1st Reckless Offense re-entry plan required school evaluation		Severe Assault or 2nd Reckless Offense Re-entry plan required mental health evaluation	✔
Threaten Staff	K-2- 3-5 Days 3-6- 5 Days 7-12- 10 Days Indirect Threat 1st Offense re-entry plan required school evaluation		Severe Threat or Indirect Threat 2nd Offense Re-entry plan required mental health evaluation	✔
Possession of Dangerous Weapons or Explosive Device	K-2- 3-5 Days 3-6- 5 Days Possession only 1st Offense re-entry plan required		K-6 Possession with intent to use or 2nd Possession Offense 7-12 Possession only Re-entry plan and required mental health evaluation	✔

Black's Law Dictionary, 5th Edition, defines "severe" as: "Sharp, grave, distressing, violent, extreme, torture, rigorous, difficult to be endured" and "indirect" as: "Not direct in relation or connection; not having an immediate bearing or application . . . Almost always used in law in opposition to 'direct' . . . ." *Black's Law Dictionary* at 695, 1233 (5th ed. 1979).

The District bases its finding that Quincy threatened Mr. Skidmore on witness statements saying that Quincy called Mr. Skidmore a "motherfucker," "[used] gestures," was "[angry] at Mr. Skidmore," "postured," and said "[I]f you ever put your hands on me again, you will regret what happens." District's Response Brief at 27. As it has throughout the course of this litigation, the District once again cites testimony by its two employee-witnesses incompletely relating Quincy's statement from the night of the dance. On cross examination, both witnesses admitted that Quincy actually said, "I am going to the school board, I did not like how you put your hands on me. If you ever come near me again you'll regret it." CP 73, 95.

Even if all of the District's characterizations of Quincy's behavior were found credible, and even if those characterizations were found to be substantial evidence of a threat, that evidence would be, at most, evidence of an "indirect threat." Quincy directly said that he was going to go to the

School Board. The remainder of Quincy's statement included a vague, indirect, and conditional remark about Mr. Skidmore regretting it if he were to put hands on Quincy again in the future.

Neither the Hearing Officer nor the Board made a finding that Quincy made a "severe threat," and the District still has never attempted to argue that Quincy did. The Board even clarified that it did "not believe that Quincy intended his actions to be a threat," which suggests that the Board would have characterized Quincy's words as an "indirect" rather than a "severe" threat, had the District raised this argument and its own procedures at that time. CP 21.

There is no evidence supporting a "severe threat," as opposed to an "indirect threat." If the District had considered its own rules, the very most the District could arguably have found was an "indirect threat," and imposed no more than a 10-day suspension. Suspending Quincy for longer than 10 days violated both WAC and the District's own rules.

C. <u>The District's 61-day exclusion of Quincy from Lewis and Clark High School was a long-term suspension.</u>

The District insists that it alone is the master of the legal terms in this case. It insists that the long-term suspension upheld by the Board was not a suspension at all, but rather a mere "exclusion." The law, however, is plain and direct.

1. WAC's and the District's definition of suspension include denial of attendance from a particular school building.

WAC defines "suspension" as "a denial of attendance (other than for the balance of the immediate class period for 'discipline' purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. *A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.*" WAC 392-400-205(2) (2014) (amended 2016) (emphasis added). The District's own definition of "suspension" in its discipline procedure parrots the WAC definition. District's Response Brief, App. A, at 15.

2. There is no confusion or ambiguity in the form or intent of the District's disciplinary actions against Quincy.

The District's required notice to Quincy on October 28, 2015, stated that he was expelled for an entire year. CP 108. The Hearing Officer's decision is equally clear and unequivocal, stating she was "imposing a long-term suspension." CP 60. Finally, the Board's decision "upholds the . . . long-term suspension." CP 21.

The District imposed a 61-school-day long-term suspension on Quincy Marin in violation of state statute, regulation, and the District's own rules.

D. Washington schools may not long-term suspend students simply because they do not believe that lesser discipline will not be effective.

There are only two conditions in WAC 392-400-260(2) that allow school districts to suspend students for more than 10 days: the student was previously disciplined for the same behavior; or, the behavior qualifies as exceptional misconduct. The District asks the court to read into the regulation a third condition—good reason to believe no other forms of corrective action would work to correct the behavior. District's Response Brief at 28.

The District's argument contradicts the plain language of WAC 392-400-260. The rule contained no such language as written when the District long-term suspended Quincy, and it contains no such language now, after it was amended in 2016. If the rule makers had been mistaken in implementing their intent, as the District asserts, OSPI would have corrected that mistake in 2016 or during the many other amendments in recent years.

However, this was no mistake in rulemaking but an intentional change. The previous long-term suspension rule, WAC 180-40-265, did have such an exception. *See Quinlan v. Univ. Place Sch. Dist.*, 34 Wn. App. 260, 263, 660 P.2d 329 (1983). In 1985, the State Board of Education asserted its rulemaking authority and substituted the overbroad

"good reason to believe that other forms of corrective action or punishment would fail if employed" exception with the more specific procedure for determining "exceptional misconduct." Wash. St. Reg. 85-12-042 at 75-76 (App. X). In its Statement of Purpose, the State Board of Education stated that the change was in direct response to the *Quinlan* decision and "to balance the constitutional right of students to receive a basic education and the need for effective discipline in the schools." Wash. St. Reg. 85-09-058 at 100-101 (App. Y). The rule now says what the state agencies authorized to make the rules clearly intended. Simply because the District wishes for the rule to say what it did more than 30 years ago does not make it so. The District may only have suspended Quincy for more than 10 days if previous discipline was attempted for the same behavior or if its exceptional misconduct procedure permitted a long-term suspension. Neither condition applies in this case.

E. The District violated Quincy's First Amendment right to free speech by suspending him for 61 school days for protected speech.

"In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511, 89 S. Ct. 733, 21 L.Ed.2d 731 (1969). The District has

not shown constitutionally valid reasons to regulate Quincy's speech as threats.

1. The District relies on First Amendment case law irrelevant to the facts of this case.

The District cites primarily inapposite cases simply to state the obvious—that speech can be regulated in schools.[3] Notably, the District did not cite a single case in its brief upholding a suspension of longer than 10 days.

2. The surveillance video is essential to the "true threat" analysis.

Though the District cites to vague employee-witness statements

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[3] The District introduced the following cases as part of its First Amendment argument. They are of limited relevance to Quincy's claims for various reasons. *Hazelwood Sch. Dist. V. Khulmeier*, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988), involved no student discipline. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986), upheld only a 2-day suspension for lewd speech after the school itself had reduced the suspension from three to two days. *Acevedo v. Sklarz*, 553 F.Supp.2d 164, 170 (D.Conn. 2008), did not uphold any school discipline and avoided a thorough First Amendment analysis through a finding of qualified immunity to reject a student's civil suit against an arresting officer. In *In re Douglas D.*, 2001 WI 47; 243 Wis.2d 204, 626 N.W.2d 725 (2001), the Wisconsin court found no true threat and held that the district could not base its discipline on that basis, but instead on a different one. *In Posthumus v. Bd. Of Ed. of Mona Shores Public Schools*, 380 F.Supp.2d 891 (W.D. Mich. 2005), the court upheld only a 10 day suspension, and, in so doing, did not cite any controlling cases for its unique ruling that "insubordinate" speech is unprotected. Finally, *State v. Avila*, 102 Wn. App. 882; 10 P.3d 486 (2000), contrary to the District's statement, dealt with no school discipline and expressly did not analyze a First Amendment claim.

about Quincy's demeanor throughout the night, it labels as "irrelevant" a video that spanned the 20 minutes before it asserts that Quincy made a threat.[4] *See* District's Response Brief at 5. The video shows Quincy's calm physical demeanor immediately after Mr. Skidmore pushed him and the girls apart. The video shows Quincy remaining calm through his departure from the building. It undermines the vague and hyperbolic descriptions of Quincy's physical behavior that evening that the District relies on in its "true threat" analysis. It shows a young man who was indeed arguing his case, but at no time does it show Quincy making threatening gestures or postures—certainly not gestures or postures characterizable as a "severe threat" or a "true threat." The video is indeed relevant and is the most credible and objective piece of evidence in this case.

F. If the District regulated Quincy's speech for reasons other than its being a "threat to staff," it did so in violation of Quincy's due process right to notice.

This Court has recently acknowledged the importance of due process in school disciplinary hearings. *Arishi v. Wash. State Univ.*, 196 Wn. App. 878, 898, 385 P.3d 251 (2016). Because the District suspended Quincy from school, it was required to provide him due process, and that

[4] Ten minutes from the middle of the video were cut by the District before it was given in discovery. Quincy has still not been shown these ten minutes of video. Based on the timestamps of the video, the duration of real time from the beginning of the video (the conflict between the girls and Quincy) to the end of the video (when Quincy left the school building) was about 20 minutes.

included written notice of the charge against him. *See Goss v. Lopez,* 419 U.S. 565, 579, 95 S. Ct. 729, 42 L.Ed.2d 725 (1975); WAC 392-400-280; WAC 392-400-265.

The District argues that schools do not have to find a "true threat" in order to regulate student speech originally labeled as threatening, relying on a Wisconsin case. *See* District's Response Brief at 35. *In re Douglas D.* upheld a short *in-school* suspension, which does not necessarily compel the minimum due process that is required for out-of-school suspensions. *See* 2001 WI 47, ¶8, 243 Wis. 2d 204, 626 N.W.2d 725.

When it originally expelled Quincy, the District was required to provide him written notice, in which it was also required to "specify the alleged misconduct and the school district rule(s) or policy alleged to have been violated." WAC 392-400-280(1)(b). The District only provided notice that it was disciplining Quincy for a "threat to staff."

Quincy did not defend himself against other allegations, because he only received notice that he was expelled for a "threat to staff." CP 108. The Hearing Officer who reduced the expulsion to a long-term suspension listed "threat to staff" as the reason for discipline in the subject line of her letter. CP 60. The Board repeated the same justification. CP 20-21. To justify this suspension now based on Quincy's foul language or disruption

of the dance violates Quincy's substantive due process rights, for the reasons stated in Section B, *supra*. To justify this suspension now based on Quincy's foul language or disruption of the dance also violates Quincy's procedural due process rights.

G. **The District obfuscated the administrative record in violation of Quincy's due process rights.**

The District has improperly flooded the record with witness statements never seen or considered by the Board. The District relies in part on statements written by witnesses who Quincy has not had the opportunity to cross examine, as required by WAC 392-400-285(c). The District correctly notes that Quincy cited to just two of these statements in his Notice of Appeal to the superior court. Quincy cited them because of his early interpretation of *de novo*, as it applied to RCW 28A.645.010. That was before the superior court ruled that no evidence not in the administrative record would be permitted. CP 15. Ignoring that ruling, the District then entered into evidence 13 of these statements and two declarations, and attached to its briefs several other documents from outside of the administrative record.

Quincy only cited to the two resource officers' written statements because the District did not make the officers available at either the

discipline hearing or the Board appeal, and Quincy wished to demonstrate the absence of proof of a "true threat" from what appeared to be witnesses the District should have provided. In so doing, Quincy violated none of the District's rights. Even if it is deemed that Quincy opened the door for these two distinct statements to be considered, he did not waive his due process rights pertaining to the 11 other statements, two declarations, and the other documents not in the administrative record and whose writers he had no opportunity to cross examine. The District's continued references to these documents demonstrate that it does not have a basic respect for the due process guaranteed by the Constitution and WAC and acknowledged as essential by this Court. *See Arishi v. Wash. State Univ.*, 196 Wn. App. 878, 898, 385 P.3d 251 (2016).

H. Compensatory education will help Quincy pursue his educational goals that the District's illegal actions worked to stall.

Compensatory education will help to reengage Quincy with his education, an education that the District's illegal action worked to disconnect him from. In its Brief, the District cited a declaration from Daniel Close from outside of the administrative record to assert that Quincy attended Lewis and Clark High School at a lower rate after he returned from the suspension than he had prior to the suspension. District's Response Brief at 40. This is evidence of the very harm that can

predictably be caused by school exclusions—particularly those that are implemented contrary to students' rights—by alienating students and disengaging them from their education for an extended period of time. These effects are anticipated by the legislature in RCW 28A.600.022, which requires that, even when districts legally suspend or expel students, they must make proactive efforts to keep students engaged, including scheduling a "reengagement meeting" with the student within 20 days of the beginning of the suspension. The District offered no evidence that it had attempted to schedule such a meeting. In providing evidence of Quincy's attendance after he returned from his suspension, the District did not show that Quincy does not desire an education; it showed that it had harmed him and precipitated his disengagement from the school where he had a right to pursue that education.

The District once again argues that it offered Quincy educational services by suggesting he attend the same out-of-District programs it had attempted to force him into the day he enrolled at Lewis and Clark High School. District's Response Brief at 39-41. The District cites to a declaration from outside of the administrative record saying that these programs were within the District. If Quincy were also allowed to provide evidence from outside the administrative record, he would simply show that the Open Doors program is an Educational Service District program

and that Gateway to College is a program of Spokane Falls Community College. Neither are District programs. Nevertheless, offering Quincy alternative District programs, or even other high schools, would not have meant that the District did not unlawfully suspend Quincy from Lewis and Clark High School. *See* WAC 392-400-205(2) (2014) (amended 2016).

Quincy asks that this Court order a determination of the correct form and amount of equitable relief Quincy is due for the violations of his legal rights.

I. <u>There is a recognized ground in equity to award Quincy reasonable attorney's fees.</u>

In Washington, attorney's fees may be awarded only when authorized by a private agreement, a statute, or a recognized ground of equity. *Fisher Props. v. Arden-Mayfair, Inc.,* 106 Wn.2d 826, 849-50, 726 P.2d 8 (1986). A court's inherent equitable powers authorize an award of attorney's fees in cases of bad faith conduct. *In re Recall of Pearsall-Stipek,* 136 Wn.2d 255, 961 P.2d 343 (1998). Bad faith includes "obstinate conduct that necessitates legal action to enforce a clearly valid claim or right," "vexatious conduct during the litigation," or the intentional bringing of "a frivolous claim or defense with improper motive." *Hiller Corp. v. Port of Port Angeles,* 96 Wn. App. 918, 982 P.2d 131 (1999).

The District has shown bad faith in all three ways described in *Hiller,* any one of which, independently, is grounds for the awarding of attorney's fees. Since the time of Quincy's first brief, the District has continued its "vexatious conduct" in this Court, first by filing all of the witness statements and other documents from outside of the record and citing to many of them in its brief, in violation of Quincy's right to confront witnesses. District's Designation of Clerk's Papers (January 19, 2017). Second, RAP 9.6(a) states that parties are encouraged to only file documents necessary to the issues on appeal. Here, the District filed all of the written briefs from superior court, lengthy documents that are irrelevant because this Court is to review the Board's decision based on the administrative record. These briefs contained even more references to documents outside of the administrative record that violated Quincy's rights to cross-examination.

In addition, the District continues its intentional bringing of "a frivolous . . . defense with improper motive," by defending its unambiguously illegal taking of Quincy's property right to a public education with new arguments that defy any reasonable interpretation of the plain language of school discipline regulations and its own policies and procedures. It argues that the word suspension does not mean what it the WAC definition says it means. It argues that it had the discretion to

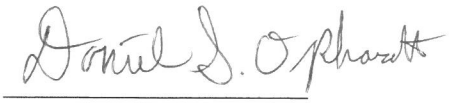
use an exception to limitations on long-term suspensions that has not existed in WAC since 1985. It presents a new argument regarding its own previously unmentioned exceptional misconduct procedure, then ignores essential information from that procedure. Finally, it argues that, even if it has broken the law, it should not be held accountable to provide Quincy compensatory education, blaming him for the very disengagement caused by its illegal actions.

The Court should grant Quincy reasonable attorney's fees based on the District's misconduct throughout this case.

II. CONCLUSION

Laws and rules have meanings, and the relevant laws and rules in this case have unambiguous ones. The District cannot invent new meanings to overcome the plain fact that it exceeded its legal authority to suspend Quincy for 61 school days. Because the District violated Washington State law and regulations, its own discipline procedure, and Quincy's First Amendment right to free speech, this Court should overturn that suspension and order the District to provide Quincy equitable relief in the form of compensatory education and attorney's fees.

Respectfully Submitted,



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Dated: April 25, 2017

Appendix X:

Washington State Register 85-12-042
Adopted Rules, State Board of Education
(Adopted 5/31/1985)

time, or competency assessments which are substantially equivalent to the definition stated in WAC 180-51-050.

AMENDATORY SECTION (Amending Order 7-84, filed 5/17/84)

WAC 180-51-110 EQUIVALENCY CREDIT FOR ALTERNATIVE LEARNING EXPERIENCES, NONHIGH SCHOOL COURSES, WORK EXPERIENCE, AND CHALLENGES. The board of directors of a district offering a high school diploma shall adopt rules providing for the granting of high school graduation credit for alternative learning experiences, nonhigh school courses, work experience, and challenges. High school credits may be given for, but not limited to, the following:

(1) Planned learning experiences conducted away from the school under the supervision or with the approval of the school;

(2) Work experience on the basis that ((~~one~~)) four hundred ((~~thirty-five~~)) five hours of work experience equals one credit;

(3) National guard high school career training;

(4) Postsecondary courses in accredited colleges and universities;

(5) Courses in accredited or approved vocational-technical institutes;

(6) Correspondence courses from accredited colleges and universities or schools approved by the National University Extension Association or the National Home Study Council;

(7) Other courses offered by any school or institution if specifically approved for credit by the district; and

(8) Credit based on competency testing, in lieu of enrollment or taking specific courses, may be granted by the district.

WSR 85-12-042
ADOPTED RULES
STATE BOARD OF EDUCATION
[Order 14-85—Filed June 5, 1985]

Be it resolved by the State Board of Education, acting at Saint Martin's College, Lacey, Washington, that it does adopt the annexed rules relating to pupils, chapter 180-40 WAC.

This action is taken pursuant to Notice No. WSR 85-09-058 filed with the code reviser on April 17, 1985. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 28A.04-.132 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 31, 1985.
By Monica Schmidt
Secretary

AMENDATORY SECTION (Amending Order 14-79, filed 10/16/79)

WAC 180-40-245 SHORT-TERM SUSPENSION—CONDITIONS AND LIMITATIONS. A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 180-40-250, and the grievance procedures set forth in WAC 180-40-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) short-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) ((~~No student shall be suspended unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed.~~)) As a general rule, no student shall be suspended for a short term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to short-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension (for example, misconduct judged by a school district to be the same or

of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) ((~~In addition to the alternative corrective action requirement of subsection (2) of this section,~~)) No student subject to compulsory attendance pursuant to chapter 28A.27 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has ((~~also~~)) first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term suspensions for more than a total of five school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(6) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades, or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

AMENDATORY SECTION (Amending Order 14-79, filed 10/16/79)

WAC 180-40-260 LONG-TERM SUSPENSION—CONDITIONS AND LIMITATIONS. A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 180-40-265 and the hearing requirements set forth in WAC 180-40-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) ((~~No student shall be suspended unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed.~~)) As a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an

immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) ((~~In addition to the alternative corrective action requirement of subsection (2) of this section,~~)) No student subject to compulsory attendance pursuant to chapter 28A.27 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has ((~~also~~)) first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term and long-term suspensions for more than a total of ten school days during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

WSR 85-12-043
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed June 5, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Personnel Board intends to adopt, amend, or repeal rules concerning:

Amd	WAC 356-14-180	Salary—Reversion—Computation.
Amd	WAC 356-18-020	Holidays.
Amd	WAC 356-30-330	Reduction-in-force—Reasons, regulations—Procedure.
New	WAC 356-42-048	Petitions for certification/decertification of exclusive representative—Contents.
Amd	WAC 356-42-082	Filing unfair labor practice charge.
Amd	WAC 356-42-083	Investigation of and disposition of unfair labor practice charges;

that the agency will at 10:00 a.m., Thursday, July 11, 1985, in the Board Hearings Room, Department of Personnel, 600 South Franklin, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 41.06.040.

The specific statute these rules are intended to implement is RCW 41.06.150 and 1.16.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 9, 1985.

Dated: June 5, 1985
By: Leonard Nord
Secretary

STATEMENT OF PURPOSE

Amend WAC 356-14-180.

Title: Salary—Reversion—Computation.

Purpose: Explains the computation of salaries for employees who revert during their trial service period.

Statutory Authority: RCW 41.06.150.

Summary: Add the words "or demoted" to this rule. All other changes to this rule are housekeeping changes.

Reasons: This rule currently applies only to employees who promote and then revert during their trial service period. However, WAC 356-30-320 indicates that employees who have voluntarily demoted and who must serve a trial service period also may be reverted during their trial service period. Therefore, since WAC 356-14-180 applies to employees who promote, it should also apply to employees who voluntarily demote.

Responsibility for Drafting: D. J. Patin, Personnel Analyst, Department of Personnel, 600 South Franklin,

Appendix Y:

Washington State Register 85-12-042
Proposed Rules, State Board of Education
(Proposed 4/17/1985)

demotion, transfer, layoff or return from layoff, termination, compensation, fringe benefits, training opportunities, and other terms and conditions of employment.

The district will make reasonable accommodations within budgetary limits for those who are disabled to allow them to perform the duties of the jobs for which they are qualified.

Several on-going efforts are aimed at insuring nondiscrimination for disabled persons:

(a) Evaluation of physical accommodations to assure that they are accessible.

(b) Review of faculty and administrative job requirements to assure that they are job-related and do not screen out qualified disabled applicants.

(c) Review of administrative job descriptions to assure that they are accurate and are not written to exclude qualified disabled applicants.

(d) Periodic articles in district publications related to legal and other aspects of the employment of disabled persons.

AMENDATORY SECTION (Amending Order 5, filed 11/13/72)

WAC 132F-148-070 FORMAL COMPLAINT ((~~OF DISCRIMINATION—GRIEVANCE~~)) PROCEDURE. ((~~(1) Any individual who feels he has been discriminated against either by the college or by individual members of the college community may file a complaint. If the complainant is a member~~ of the ~~college community he should first file a written complaint with his immediate supervisor. If it is not resolved at this level to the complainant's satisfaction within ten working days he should file a written complaint with the EEOC officer or, for district employees, with the district employee relations director. All written complaints must be responded to in writing with copies forwarded to the appropriate president, instructional dean or chief administrative officer. The officer will have the authority to hear and recommend corrective action, if necessary, on behalf of the college.~~

~~(2) If the complainant is not a member of the college community he should file his complaint with either the campus EEOC officer at which the complaint is directed or with the district employee relations director. All such complaints should be in written form.~~)) Any individual who feels she/he has been discriminated against on the basis of race, color, religion, handicap, national origin, age or sex either by the district or by an individual employee of the district may file a formal complaint. Such a complaint may be filed through existing grievance procedures (where applicable), directly with the individual responsible for affirmative action in each organizational unit or with the district personnel director. A formal complaint may be filed either following or instead of any informal attempt at resolution. Individuals with complaints are encouraged to follow the procedures outlined herein prior to contacting any outside enforcement agency.

The complainant should be advised of his/her right to file a complaint with the Washington State Human Rights Commission, Seattle Human Rights Department, Equal Employment Opportunity Commission, Office of Federal Contract Compliance, or the Office of Civil Rights. However, complainants are encouraged to use the internal grievance procedures to resolve complaints.

Complaints filed with persons responsible for affirmative action shall be processed as follows:

(1) Complaints shall be in writing, shall contain specific information and shall be promptly investigated by the appropriate administrator.

(2) Response shall be made to the complainant in writing, within 15 working days of receipt of the complaint.

(3) Copies of both the complaint and the response shall be forwarded to the relevant appointing authority.

(4) The appointing authority will respond in writing to the complainant within 15 working days.

(5) Written appeal may be made to the appointing authority within 15 working days after the complainant receives the response.

(6) The appeal will be investigated and final response made by the appointing authority within 15 working days.

(7) Written appeal may be made to the chancellor (if the appointing authority is not the chancellor) who shall then investigate and respond to the complainant within 15 working days of receipt of the written request.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

Reviser's note: RCW 28B.19.077 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 85-09-058
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed April 17, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Board of Education intends to adopt, amend, or repeal rules concerning pupils, chapter 180-40 WAC;

that the agency will at 9:00 a.m., Thursday, May 30, 1985, in the Student Union Building, St. Martin's College, Lacey, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on Friday, May 31, 1985.

The authority under which these rules are proposed is RCW 28A.04.132.

Dated: April 17, 1985
By: Monica Schmidt
Secretary

STATEMENT OF PURPOSE

Rule: Chapter 180-40 WAC, Pupils.

Rule Sections: WAC 180-40-245 Short-term suspension—Conditions and limitations; 180-40-260 Long-term suspension—Conditions and limitations; and 180-40-275 Expulsion—Conditions and limitations.

Statutory Authority: RCW 28A.04.132.

Purpose of the Rules: To establish the procedural and substantive due process rights of students.

Summary of the New Rules and/or Amendments: The amendments to these three sections add clarification respecting the establishment and imposition of predetermined penalties and, with the exception of WAC 180-40-275 respecting expulsions, allow school boards the discretionary power to suspend students in the case of first time offenses involving exceptional misconduct.

Reasons Which Support the Proposed Actions: The proposed amendments are in response to the third petition by one or more school districts over the years for a rule change allowing for exceptions to the "prior alternative corrective action" requirement in cases of "serious" misconduct, and Quinlan v. University Place School District 34 Wn. App. 260 (1983) in which the court in effect read out of chapter 180-40 WAC the exception to prior alternative correction which had been provided for in 1977.

Person or Organization Proposing the Rules: SPI, government.

Agency Personnel Responsible for Drafting: Ralph E. Julnes, SPI, 3-2298; Implementation: Local school districts; and Enforcement: Courts of law.

The rules are necessary as the result of state court action, Quinlan v. University Place Sch. Dist. 34 Wn. App. 260, 660 P.2d 329 (1983).

Agency Comments, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matter

Pertaining to the Rules: Attempts to balance the constitutional right of students to receive a basic education and the need for effective discipline in the schools.

AMENDATORY SECTION (Amending Order 14-79, filed 10/16/79)

WAC 180-40-245 SHORT-TERM SUSPENSION—CONDITIONS AND LIMITATIONS. A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 180-40-250, and the grievance procedures set forth in WAC 180-40-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) short-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) ((~~No student shall be suspended unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed.~~)) As a general rule, no student shall be suspended for a short term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to short-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) ((~~In addition to the alternative corrective action requirement of subsection (2) of this section,~~)) No student subject to compulsory attendance pursuant to chapter 28A.27 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has ((~~also~~)) first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term suspensions for more than a total of five school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(6) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades, or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

AMENDATORY SECTION (Amending Order 14-79, filed 10/16/79)

WAC 180-40-260 LONG-TERM SUSPENSION—CONDITIONS AND LIMITATIONS. A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 180-40-265 and the hearing requirements set forth in WAC 180-40-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action or punishment for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) ((~~No student shall be suspended unless other forms of corrective action or punishment reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed.~~)) As a general rule, no student shall be suspended for a long term unless another form of corrective action or punishment reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action or punishment has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action and/or punishment, as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws).

The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socio economic, minority and majority populations of the school district to the extent deemed practical.

(3) ((~~In addition to the alternative corrective action requirement of subsection (2) of this section,~~)) No student subject to compulsory attendance pursuant to chapter 28A.27 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has ((~~also~~)) first imposed an alternative corrective action or punishment reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term and long-term suspensions for more than a total of ten school days during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending Order 14-79, filed 10/16/79)

WAC 180-40-275 EXPULSION—CONDITIONS AND LIMITATIONS. A student may be expelled for violation of school district rules adopted pursuant to WAC 180-40-225, subject to the following limitations or conditions, the notice requirements set forth in WAC 180-40-280, and the hearing requirements set forth in WAC 180-40-285:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant the harshness of expulsion. This requirement does not preclude school districts (that is, the board of directors of school districts) from establishing the nature and extent of the corrective actions and/or punishments which as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action and/or punishment is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) expulsion is not established as the corrective action or punishment for a student's first time offense.

(2) No student shall be expelled unless ((~~other~~)) another form((~~s~~)) of corrective action or punishment reasonably calculated to modify his or her conduct ((~~have failed or unless there is good reason to believe that other forms of corrective action or punishment would fail if employed~~)) has previously been imposed upon the student as a consequence of misconduct of the same nature.

(3) In addition to the alternative corrective action requirement of subsection (2) of this section, no student subject to compulsory attendance pursuant to chapter 28A.27 RCW, as now or hereafter amended, shall be expelled by reason, in whole or part, of one or more unexcused absences unless the school district has also first:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Once a student has been expelled in compliance with this chapter the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs.

(5) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(6) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

WSR 85-09-059
ADOPTED RULES
STATE BOARD OF EDUCATION
[Order 7-85—Filed April 17, 1985]

Be it resolved by the State Board of Education, acting at Jenne-Wright School, Silverdale, Washington, that it does adopt the annexed rules relating to State assistance in providing school plant facilities—Preliminary provisions, chapter 180-25 WAC.

This action is taken pursuant to Notice No. WSR 85-06-070 filed with the code reviser on March 6, 1985. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 28A.47-.830 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED April 12, 1985.

By Monica Schmidt
Secretary

DECLARATION OF DOCUMENT FILING AND SERVICE

I, Daniel Ophardt, declare that on this 25th day of April, 2017, I caused the original REPLY BRIEF OF APPELLANT to be filed at the Washington State Court of Appeals, Division III, and a true copy of the same to be served in person on the following:

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DATED this 25th day of April, 2017 at Spokane, Washington.

Respectfully,

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