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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 347915

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

QUINCY MARIN,

Appellant,

vs.

SPOKANE PUBLIC SCHOOLS NO. 81,

Respondent.

SCHOOL DISTRICT'S RESPONSE BRIEF

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I. INTRODUCTION

This case is about a school district's authority to discipline a student who failed to follow a school official's directives, who repeatedly referred to a school official as "that mother fucker," who got in a school official's face and called him a "fucking asshole, mother fucker," and who told a school official, who had broken up an altercation between Appellant and other students, "[I]f you ever put your hands on me again, you will regret what happens." Appellant argues that such actions did not give the District sufficient grounds to exclude him from Lewis and Clark High School, while still offering him a choice of other educational opportunities. However, the existing law clearly establishes that the District rightfully acted within its discretion in disciplining Appellant. Accordingly, Respondent Spokane School District No. 81 (the "District") asks this Court to uphold the District's Board of Directors' (the "Board") decision to suspend Appellant from Lewis and Clark, denying all of his requested relief.

II. ASSIGNMENTS OF ERROR

Neither the Board nor the Superior Court erred in upholding Appellant's exclusion from Lewis and Clark.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the District violate Article IX, section 1 of the Washington Constitution by offering Appellant an opportunity to earn credits at an accelerated rate so he could graduate from high school on time?

2. Did the District violate Washington discipline regulations when it excluded Appellant from Lewis and Clark for threatening a school administrator, but continued to offer him educational services?

3. Did the District violate Appellant's First Amendment right to free speech by excluding him from Lewis and Clark for directing profanity at a school administrator and posturing in a threatening manner, during a school dance?

IV. STATEMENT OF THE CASE

On September 18, 2015, well beyond the normal enrollment period, Appellant arrived at the Lewis and Clark office demanding to be enrolled. CP 100. The individual working the front desk was a substitute secretary who was unfamiliar with Lewis and Clark's filing system and didn't know how to put together an enrollment packet. CP 31. Appellant started arguing with the school secretary. CP 31. Principal Assistant Taylor Skidmore heard the commotion and invited Appellant into his office to see why he was upset. CP 31.[1] Rather than explaining the situation to Mr. Skidmore, Appellant kept insisting, "I need to go to school. I need to get in school *right now*." CP 31 (emphasis added). Those in the office tried telling Appellant they could work on getting him in school and tried describing the

[1] Appellant's assertion that Mr. Skidmore commented on his appearance is disputed; and neither trier of fact, the Hearing Officer nor the Board, found that any such comments were made. CP 32. In fact, there had never been any complaints, prior to Appellant's allegation, that Mr. Skidmore had demonstrated discriminatory behavior or a lack of respect toward students of color. CP 35.

procedure for enrolling a student; however, before they could help, Appellant stormed out of the office. CP 31.

Once Appellant left the office, he called Sarah Miller, the District's homeless student liaison. CP 78. He was "extremely upset," and Ms. Miller couldn't understand what he was saying. CP 78. After Ms. Miller finally got Appellant to calm down, he erroneously told her that he had been kicked out of Lewis and Clark and that the office staff hadn't allowed him to enroll. CP 78. Ms. Miller instructed Appellant to go back to the office to enroll, and she called the office to make sure the staff were watching for him. CP 78.

When Appellant came back to the office, there was an enrollment packet waiting for him. CP 31. Lewis and Clark went to great lengths to accommodate Appellant by directly contacting his prior school in California and having his transcript faxed over that same day. CP 31. And Appellant was enrolled at Lewis and Clark that day. CP 31. This sort of expedited procedure went above and beyond Lewis and Clark's normal intake methods for new students.

Appellant met with school counselor Lisa Renner to create a class schedule. CP 79. Ms. Miller was also present at that meeting. CP 79. Because Appellant was 18 years old and had only 13 credits, Ms. Renner informed Appellant about programs that would help him earn credits at an

accelerated rate and allow him to be with students his age—such as the Gateway to College program, On Track Academy, and the Open Door GED study program.[2] CP 31, 35, 79-80. Appellant, however, chose to attend Lewis and Clark. CP 79. Ms. Renner accepted this decision and helped Appellant schedule a full course load. CP 79.

Despite these efforts, Appellant only sporadically attended Lewis and Clark. CP 32, 77. In fact, he was attending only 53% of his classes and was failing five of his six classes before he was disciplined for his conduct at the homecoming dance on October 17, 2015. School District's Response Brief at 14 (referencing attached attendance record).

During the dance, Appellant approached a 14-year old girl, J.O.[3], and engaged in the following actions:

> [Appellant] came up behind me and grabbed my waist and was trying to grind on me so I moved away from him and said no and [L.A.] and [A.S.] both told him not to touch me and to go away.

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[2] "The 'Open Doors' program is a G.E.D. study program that students enter into while waiting for the 'Gateway to College' program. The 'Gateway to College' program allows student to attend a community college and earn both High School and College Credit at an accelerated pace." Decl. of Daniel Close.

[3] In order to protect the identity of minor students, their initials are used to identify them.

CP 130.[4] Rather than go away, Appellant threatened the girls, letting them know if they didn't get out of his face, he was going to put his hands on them. CP 132.

Out in the hall, Appellant continued harassing the girls: he came up to A.S. and called her a "bitch." CP 132-33. A.S. told Appellant to walk away. CP 133. Once again, rather than walk away, Appellant got in A.S.'s and L.A.'s faces. CP 133. Observing the altercation, Mr. Skidmore initially hung back in hopes that the situation would resolve itself. CP 64. As the argument became increasingly heated and the students began cursing and posturing toward one another, Mr. Skidmore was compelled to intervene. CP 64. He placed himself between Appellant and the girls, extending his arms to separate them. CP 64. Despite Mr. Skidmore's best efforts, Appellant continued to come at the girls, and the girls continued to come at Appellant. CP 64.

Because of Appellant's and the girls' behavior, Mr. Skidmore told them they needed to leave the dance. CP 64. The girls left the dance after a little bit of convincing. CP 64. Appellant, on the other hand, continued to argue, saying, "F this and F that. I'm not leaving; you can't make me

[4] Appellant frequently cites to the surveillance video as though it captures the conduct that is relevant to this case; however, the video is irrelevant because it does not capture any of the events that led to Appellant's exclusion from Lewis and Clark. All of Appellant's threatening behavior took place outside.

leave." CP 64. As noted by witnesses, "[Mr. Skidmore] kept a very cool, calm, even keel approach to the situation and he was making every attempt to de-escalate what was going on." CP 67.

While Appellant kept cussing and arguing, Mr. Skidmore escorted him out of the building. CP 64. Because Appellant refused to leave, Mr. Skidmore got the school resource officers, Walt Pegram and William Decaro, involved. CP 64. As Mr. Skidmore tried to explain the situation to Officer Pegram, Appellant repeatedly referred to Mr. Skidmore as "that mother fucker." CP 27, 64, 95, 128. Officer Decaro stated that Appellant "was calling Skidmore names and using gestures that I thought were aggressive and threatening in nature. Theses gestures included hitting his chest and stuck it out pointing at Skidmore." CP 124. Both officers tried to calm Appellant down—one of them even warned him to be careful about what he was saying—but "he continued to escalate." CP 124, 128. Again, Appellant was directed to go home, but he didn't comply. CP 124, 128.

Finding anyway to linger at the dance, Appellant told the officers that he needed to get his date before he left. CP 124. The officers agreed to escort Appellant back into the building as long as he remained outside the dance with one officer while the other officer got his date. CP 29. Yet once in the building, Appellant bolted into the dance, defying the officers' directive. CP 29. After Appellant had found his date, Mr. Skidmore and

Assistant Principal Tracey Leyde led Appellant out of the building. CP 64. Appellant's date, however, refused to leave with him. CP 65.

As Mr. Skidmore, Ms. Leyde, and Appellant were leaving the building, Appellant was "swearing and very upset and angry. [And] all of [his] anger was directed at Mr. Skidmore." CP 72. Mr. Skidmore and Ms. Leyde determined that Appellant's posturing, gesturing, and cursing were threatening and warranted an emergency expulsion. CP 64. Ms. Leyde and Mr. Skidmore told Appellant he was emergency expelled and that he shouldn't come to school on Monday. CP 64. In doing so, they followed the legal requirement that a student be immediately informed that he or she has been emergency expelled. WAC 392-400-300. Appellant then turned around, got directly in Mr. Skidmore's face, postured, swore at him—calling him "fucking asshole, mother fucker"—and threatened him: "[I]f you ever put your hands on me again, you will regret what happens." CP 72, 64, 95. And amidst his curse words and threats, Appellant said he would go to the school board because he didn't like how Mr. Skidmore touched him. CP 73, 95.

Walking away, Appellant yelled, "I don't care about your fucking rules. You are all a bunch of assholes. . . . I'm not going to listen to you." CP 73. And Appellant did just that when he showed up at school on the

following Monday. CP 65. The resource officers eventually had to escort him off school grounds. CP 65.

Following standard procedures, Lewis and Clark administrators gave Appellant written notice of his emergency expulsion on October 19, 2015. CP 107. After Vice Principal Daniel Close gathered statements from the students, administrators, and resource officers that witnessed the events of October 17, he concluded that Appellant's emergency expulsion should be converted to an expulsion. CP 28. Mr. Close also determined that since Appellant was being excluded from Lewis and Clark, it would, nonetheless be appropriate to offer Appellant other educational opportunities, such as Gateway to College or Open Doors, so he could continue earning credits. CP 28, 97-98. Appellant was notified of his expulsion on October 29, 2015. CP 108.

Appellant appealed his exclusion from Lewis and Clark to a hearing officer. A hearing was held on November 16, 2015. CP 60. During the hearing, Lewis and Clark administrators testified about Appellant's behavior during the homecoming dance; and Appellant, represented by an attorney, had an opportunity to testify and provide evidence on his behalf. The Hearing Officer upheld Appellant's emergency expulsion, but converted his expulsion to a long-term suspension through January 29, 2016. CP 60.

On November 20, 2015, Appellant appealed the Hearing Officer's decision to the Board. CP 58-59. The Board heard Appellant's appeal on December 14, 2015. The law provides for three separate procedural options in a student discipline appeal to a school board. Pursuant to conversations with the Board, Appellant's attorney agreed to handle the appeal in the following manner: the Board would review the transcript of the earlier hearing and all exhibits submitted by Appellant and Lewis and Clark; Appellant and his attorney would be allowed to show and comment on video footage from the homecoming dance; and both sides would be allowed to making closing arguments. CP 20-21.

The Board determined that Appellant's profanity, posturing, and his agitated state could reasonably be perceived as threatening. CP 21. While the Board found that Appellant's conduct violated District rules, it wanted to convey to Appellant that it supported his stated educational goals. Thus, the Board decided to "reinstate [Appellant] into Spokane School District immediately, albeit not at Lewis and Clark High School, so that he can continue his education and have the opportunity to obtain some credits towards graduation." CP 21. Additionally, the Board directed District administrators to provide Appellant "access to an appropriate School District program, such as Gateway or the ICAN program that would give Appellant an opportunity to earn some credits" while he was suspended.

CP 21. Appellant declined to access those programs. Decl. of David Crump.

When Appellant's suspension from Lewis and Clark ended, he reenrolled at Lewis and Clark. Decl. of Dan Close. However, once again, he rarely attended school. District's Response Brief at 14 (referencing attached attendance records). In fact, his total attendance rate was 17%. District's Response Brief at 14 (referencing attached attendance records). Eventually, Appellant voluntarily unenrolled from Lewis and Clark and enrolled in the Open Doors and the Gateway to College programs. Decl. of Dan Close. Unfortunately, he didn't attend these programs either. Decl. of Daniel Close.

On February 4, 2016, Appellant appealed the Board's decision and brought a complaint for compensatory education under the Uniform Declaratory Judgment Act (the "UDJA"). CP 1, 3; Appellant's Trial Brief at 30. In accordance with RCW 28A.645.030, the District filed "the complete transcript of the evidence and the papers and exhibits relating to the [Board's] decision for which" Appellant filed a complaint. The complete transcript of the evidence included the transcript of the hearing before the Hearing Officer and the transcript of the Board hearing, along with witness statements that were submitted during those hearings or

exchanged between the parties. Appellant did not object to any of the documents included in the complete transcript of the evidence.

When Appellant filed his appeal to Superior Court and his Trial Brief, he cited several written statements that were included in the complete transcript of the evidence. CP 8; Appellant's Trial Brief at 4, 5, 7. These statements were exchanged between the parties, but were not formally admitted as exhibits before the Hearing Officer. Responding to Appellant's Trial Brief, the District also felt free to cite to any of the documents, including witness statements, in the complete transcript of the evidence—assuming that constituted the record—and did so. Additionally, to refute misrepresentations in Appellant's Trial Brief and to defend against Appellant's compensatory education complaint, the District filed two declarations of District administrators and submitted Appellant's attendance records as exhibits.

When Appellant replied to the District's response, he asked the Superior Court to strike the District's response in full. Appellant alleged that the District had included several documents in the complete transcript of evidence that were not part of the record before the Hearing Officer and the Board—five months after the complete transcript of the evidence had been filed—and that the District had cited to a number of those documents in its response brief. He subsequently filed a motion to strike.

In response, the District pointed out that Appellant himself had cited to several written statements included in the complete transcript of evidence that he was now arguing were not properly part of the record. The District believed that because Appellant had not objected to any of the documents included in the complete transcript of the evidence and because he cited liberally from those documents, in both his complaint and Trial Brief, that he considered all of them to be part of the record.

A hearing was held on August 12, 2016, in which the Superior Court heard oral argument on all the issues in the case, including Appellant's motion to strike. On August 25, 2016, the Superior Court, after reviewing the entire case file, issued a memorandum decision in favor of the District, denying all of Appellant's requested relief—including his request to overturn the Board's decision, his request for compensatory education, and his request to strike the District's brief. CP 192-93.

Appellant has now filed an appeal with this Court. He alleges that the Board and the Superior Court erred in deciding to uphold his exclusion from Lewis and Clark. Appellant has not, however, appealed the Superior Court's denial of his motion to strike. Accordingly, the complete transcript of the evidence in its entirety constitutes the record for review. And because Appellant is continuing to pursue his compensatory education claim, the additional evidence that the District filed with the Superior

Court—the declarations of District administrators and Appellant's attendance record—are relevant to deciding that claim.

V. STANDARD OF REVIEW

While Appellant initially argues for *de novo* review, it is apparent he acknowledges a more deferential standard applies. Appellant's Brief at 22. He argues that this Court may overturn the Board's decision if the Board "erroneously interpreted or applied the law" or if the Board's decision "is not supported by evidence that is substantial when viewed in light of the whole record before the court"—effectively borrowing the standards for judicial review from the Washington Administrative Procedure Act (the "APA"). Appellant's Brief at 24 (internal quotations omitted).[5] In fact, Appellant states, "The rest of this brief will demonstrate that the Board misinterpreted or misapplied the law *and* that its order to continue to exclude Appellant from Lewis and Clark was, 'not supported by evidence that is substantial when viewed in the light of the whole record before the court.'" Appellant's Brief at 24 (citation omitted). The District agrees that the Board's decision may be overturned if this Court determines

[5] Appellant cites to *Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wn.2d 621, 627-28, 869 P.2d 1034 (1994), to support his argument—in fact, he supposedly quotes from that case. However, the quoted language in Appellant's brief is nowhere to be found in *Waste Management of Seattle*. The quoted language actually is from the APA. *See* RCW 34.05.570(3) (listing when a court may grant relief from an agency order, including when an agency erroneously interprets or applies the law and when the agency's order is not supported by substantial evidence).

that the Board erroneously interpreted or applied the law or if it determines that the Board's decision was not supported by substantial evidence.

A. It is unclear what standard of review appellate courts in Washington apply when reviewing student discipline decisions.

No cases brought under RCW 28A.645.010 address what standard of review an appellate court uses when reviewing a student discipline decision. *See Briggs v. Seattle Sch. Dist. No. 1*, 165 Wn. App. 286, 288, 266 P.3d 911, 912 (2011) (addressing whether the trial court erred by granting the school district additional time to provide an adequate record); *Derrey v. Toppenish Sch. Dist. No. 22*, 69 Wn. App. 610, 615, 849 P.2d 699, 702 (1993) (holding that timeline under former RCW 28A.88.010 did not apply to tort claims); *Mountain View School v. Issaquah Sch. Dist. No. 411*, 58 Wn. App. 630, 633, 794 P.2d 560, 562 (1990) (holding that timeline under former RCW 28A.88.010 did not apply to a trade name infringement claim); *Haynes v. Seattle Sch. Dist. No. 1*, 111 Wn.2d 250, 254, 758 P.2d 7, 9 (1988) (holding that the time limit under former RCW 28A.88.010 applies to both quasi-judicial and nonjudicial actions); *Yaw v. Walla Walla Sch. Dist. No. 140*, 40 Wn. App. 36, 38, 696 P.2d 1250, 1252 (1985) (holding that superior court's apply a de novo standard of review only if the school board performs a judicial function); *Neilson v. Vashon*

Island Sch. Dist. No. 402, 87 Wn.2d 955, 558 P.2d 167 (1976) (holding appeal was timely).

None of the cases cited above actually reviewed the substantive issues; thus, there was no discussion of the applicable standard of review. Rather, they addressed procedural aspects of Chapter RCW 28A.645, such as whether the time limit of RCW 28A.645.010 applies to certain claims. In cases when appellate courts did review the substantive issues, the courts reviewed the trial courts' decisions, not the school boards' decisions, and they did not articulate what standard of review they applied. *See Quinlan v. University Place Sch. Dist. 83*, 34 Wn. App. 260, 261, 660 P.2d 329 (1983) (reviewed the trial court's findings of fact and reversed its judgment); *Milikan v. Bd. of Directors of Everett Sch. Dist. No. 2*, 93 Wn. 2d 522, 525, 611 P.2d 414, 415 (1980) (reviewing the trial court's summary judgment decision). Thus, there is no authority that clearly states what standard of review this Court should apply in reviewing the Board's decision to exclude Appellant from Lewis and Clark.

B. It is appropriate to borrow the standards for judicial review from the APA.

Given the lack of authority regarding what standard of review this Court should apply, it is appropriate to borrow from the APA.[6] In

[6] In an unpublished Division I case involving an appeal of a student discipline decision with a similar procedural history as this one, the court borrowed from APA cases to

Appellant's brief, he has already applied the standards for judicial review from the APA, arguing that this Court may overturn the Board's decision only if the Board erroneously interpreted or applied the law or if the Board's decision is not supported by substantial evidence. The District agrees.

In deciding whether the Board erroneously interpreted or applied the law, this Court reviews the Board's decision under the error of law standard. *Beatty v. Washington Fish and Wildlife Comm'n*, 185 Wn. App. 426, 443, 341 P.3d 291, 301 (2015). "When applying the error of law standard, the court may substitute its own judgment for that of the [Board], although it must give substantial weight to the [Board's] view of the law it administers." *Id.*

In deciding whether the Board's decision is supported by substantial evidence, this Court looks at whether the "record contains evidence sufficient to persuade a fair-minded, rational person of the truth of the matter." *Xenith Group, Inc. v. Dep't of Labor and Indus.*, 167 Wn. App. 389, 349 P.3d 858, 860 (2012) (quoting *R & G Probst v. Dep't of Labor & Indus.*, 121 Wn. App. 288, 293, 88 P.3d 413 (2004)). "When reviewing the

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determine the standard of review. *See Hann v. Kent Sch. Dist.*, 106 Wn. App. 1011 (2001). This case is not being referenced for precedential value or as persuasive authority; it is referenced only to inform this Court how another court of appeals has handled a similar situation.

evidence, the court should give substantial deference to the agency's determinations, which are based heavily on factual matters . . . ." *Beatty*, 185 Wn. App. at 449, 341 P.3d at 304; *accord.*, *Alpha Kappa Lambda Fraternity v. Washington State University*, 152 Wn. App. 401, 418, 216 P.3d 451, 460 (2009) ("The substantial evidence standard, like the arbitrary and capricious standard, is 'highly deferential' to the agency fact finder."). And the evidence is viewed "in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority," which "necessarily entails accepting the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences." *Brown v. Dep't of Social and Health Sciences*, 190 Wn. App. 572, 593-94, 360 P.3d 875, 886 (2015).

Additionally, the Board's decision "is presumed correct," and Appellant bears the burden of demonstrating that the Board erroneously interpreted or applied the law and that its decision was not supported by substantial evidence. *Providence Health & Services-Washington v. Dep't of Health*, 194 Wn. App. 849, 856, 378 P.3d 249, 253 (2016).

C. Regardless of the standard of review this Court applies, the District's decision to discipline Appellant should be given highest consideration.

When it comes to student discipline, "the highest consideration is given to the judgment of qualified certificated educators regarding the

conditions necessary to maintain the optimum learning atmosphere." RCW 28A.600.020(1). One court aptly articulated the deference that courts ought to give to the disciplinary decisions of school officials:

> School discipline is an area which courts enter with great hesitation and reluctance and rightly so. School officials are trained and paid to determine what form of punishment best addresses a particular student's transgression. They are in a far better position than is a black-robed judge to decide what to do with a disobedient child at school. They can best determine, for instance, whether a suspension or an after-school detention will be more effective in correcting a student's behavior. Because of their expertise and their closeness to the situation and because we do not want them to fear court challenges to their every act school officials are given wide discretion in their disciplinary actions.

Donaldson v. Bd. of Ed. for Danville Sch. Dist. No. 118, 98 Ill. App.3d 438, 439, 424 N.E.2d 737, 738-39 (1981). Thus, courts do not substitute their judgment for that of school officials. *Brown v. Plainfield Community Consol. Dist. 202*, 522 F. Supp.2d 1068, 1077-78 (N.D. Ill. 2007). And they will not overturn school officials' disciplinary decisions unless those decisions are so arbitrary and capricious as to constitute an abuse of discretion. *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1, 5, 767 N.E.2d 1054, 1057-58 (2002); *accord.*, *Hill v. Safford Unified Sch. Dist.*, 191 Ariz. 110, 113-14, 952 P.2d 754, 757-58 (1997); *Williams v. Bd. of Ed. for Marianna Sch. Dist.*, 274 Ark. 530, 533-34, 626 S.W.2d 361, 363 (1982).

Additionally, courts uphold a school's "disciplinary determinations so long as the school's interpretation of its rules and policies is reasonable, and there is evidence to support the charge." *C.R. Eugene Sch. Dist. 4J*, 835 F.3d 1142, 1148 (9th Cir. 2016); *accord.*, *Board of Educ. of Rogers, Ark. V. McCluskey*, 458 U.S. 966, 972, 102 S.Ct. 3469, 3472 (1982) (holding that a school board's interpretation of its policy controls, not a court's); *Wood v. Strickland*, 420 U.S. 308, 326, 95 S.Ct. 992, 1002 (1975) ("It is not the role of federal courts to set aside decisions of school administrators which the court may view as lacking in wisdom or compassion.").

Accordingly, Lewis and Clark administrators' decision to discipline Appellant and the Board's decision to uphold that decision should be given the highest consideration and substantial deference. This level of deference is particularly appropriate in this case where an independent hearing officer and an elected school board, which has significant expertise on the standards necessary for maintaining an appropriate educational environment, rendered a decision regarding student discipline.

VI. ARGUMENT

Student discipline is necessary to maintain a functional school environment in which students can learn. A school district cannot provide

adequate educational services to students in a disruptive environment. Indeed, the U.S. Supreme Court has specifically noted that student discipline is a "valuable educational device" that is necessary for a school to maintain order and provide an adequate learning environment for students. *Goss v. Lopez*, 419 U.S. 565, 580, 95 S.C.t 729, 739 (1975).

The Washington State Supreme Court also has commented on the necessity of student discipline in maintaining a functional educational environment:

> The school's duty to maintain order and discipline is not grounded upon arbitrary grounds. The school's function is to educate children, both intellectually and socially, to prepare them to properly function in our evermore complex adult world. Because of the number of students brought together during a school day, the education function can only be accomplished by maintaining order and discipline in the school. Further, certified school personnel must maintain school-room decorum in order to protect other students' rights to be secure and to be left alone.

State v. McKinnon, 88 Wn.2d 75, 80-81, 558 P.2d 781, 784 (1977); *accord.*, *State v. Knuston*, 88 Wn. App. 677, 680-81, 946 P.2d 789, 790-91 (1997) ("The mission of Washington's school system is to provide a 'beneficial learning environment for all students,' and to that end, corrective measures are implemented so that 'good order and discipline' may be maintained in each classroom . . . .").

The District appropriately exercised its authority to maintain a beneficial learning environment for its students when it excluded Appellant from Lewis and Clark. Allowing students to act toward school staff the way Appellant spoke to and treated Mr. Skidmore would undermine appropriate and necessary school standards. The District did not violate the Federal Constitution, the Washington State Constitution, nor the Washington disciplinary regulations when it excluded Appellant from Lewis and Clark.

A. The District did not violate Washington Constitution Art. XI, section 1.

Appellant argues that "[t]he District's *suggestion* that [he] transfer to the out-of-District, non-high school programs of Open Doors and Gateway to College did not accomplish its duty of providing its kindergarten through twelfth grade basic educational program to [Appellant]." Appellant's Brief at 20 (emphasis added).[7] In other words, Appellant argues that the District violated its duty to provide him a basic education when it offered him a chance to earn credits at an accelerated rate so that he would have a greater chance of graduating from high school. Appellant came to the District as an 18-year old extremely

[7] Contrary to Appellant's contention, the Open Doors and Gateway to College programs are programs the District operates in conjunction with other educational entities in the community. Decl. of Daniel Close.

deficient in credits and a history of failing his classes. CP 35. The District went beyond its legal duty by offering Appellant these very appropriate educational programs. The *suggestion* that the District violated the Constitution by doing so is absurd.

B. Appellant was excluded from Lewis and Clark, not suspended or expelled.

Under the disciplinary regulations that applied at the time Appellant was disciplined, a suspension or an expulsion constituted cessation of educational services for a certain period, not merely exclusion from a particular school while still being offered educational services. *See* WAC 392-400-205(2) & (6). In other words, excluding a student from a particular school placement while offering him or her educational services at another placement does not constitute a suspension or expulsion. This is especially true since students do not have a right to attend "any particular public school." *Citizens Against Mandatory Bussing v. Palmason*, 80 Wn.2d 445, 453, 495 P.2d 657, 663 (1972); Briggs, 165 Wn. App. at 295, 266 P.3d at 915 ("No person has a right to have their child attend at a particular school building.").

Based on this, Appellant was never actually suspended or expelled. When the District notified Appellant that he was being excluded from Lewis and Clark, it offered him the opportunity to continue receiving

educational services through other District programs. Decl. of Daniel Close. Appellant declined those services; but that does not change the fact that the District gave Appellant the opportunity to continue his education during his exclusion from Lewis and Clark. Moreover, the Board only excluded Appellant from Lewis and Clark. The Board's decision explicitly states: "It is the decision of the School Board to *reinstate Quincy into Spokane School District immediately*, albeit not at Lewis and Clark High School, so that he can continue his education and have the opportunity to obtain some credits towards graduation." CP 21 (emphasis added).

Because Appellant was not actually suspended or expelled, the disciplinary regulations that set conditions and limitations on suspending and expelling students did not apply when Appellant was disciplined. The deference afforded to school district disciplinary decisions is, the district submits, even greater when as here the student is not excluded from receiving educational services.

C. Even if this Court determines that Appellant was suspended, the District did not violate the disciplinary regulations.

Appellant argues that the District violated the disciplinary regulations because it didn't use progressive discipline. Appellant's Brief at 27-28. Appellant argues that the District had to use progressive discipline because his conduct did not involve exceptional misconduct.

Appellant's Brief at 29. However, the very reason for which he was disciplined—threat to staff—was clearly defined as exceptional misconduct under the District's applicable Policy and Procedure 3200 (3200P). Furthermore, the District had good reason to believe that other forms of corrective action would fail if employed, giving the District further justification to suspend Appellant. Lastly, Appellant argues that the length of the suspension was not reasonably warranted. Appellant's Brief at 30-31. However, the Board carefully considered "the nature and the circumstances of the violation" and found the length of the suspension was reasonably warranted. *See* WAC 392-400-260(3).

1. The District did not have to use progressive discipline with Appellant.

"*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." WAC 392-400-260(4) (emphasis added). Although this may be the general rule, the disciplinary regulations give school officials the flexibility to long-term suspend—or even expel—a student without having previously imposed discipline on him or her. For example, school officials may long-term suspend a student "in cases involving exceptional misconduct . . ., notwithstanding the fact

prior alternative corrective action has not been imposed upon the student(s) involved." WAC 392-400-260(4).[8] And school officials may expel a student if "there is good reason to believe that other forms of corrective action would fail if employed." WAC 392-400-275(4).

Thus, as long as Appellant's conduct constituted exceptional misconduct or the District had good reason to believe no other forms of corrective action would work, it could long-term suspend Appellant without using progressive discipline. His conduct did constitute exceptional misconduct, and the District did have good reason to believe no other forms of corrective action would work.

i. Appellant was disciplined for threatening a staff member, which is exceptional misconduct.

Lewis and Clark notified Appellant that he was being expelled for threatening a staff member in violation of 3200P. CP 107-108. Under 3200P, a threat to staff constitutes exceptional misconduct.[9] It states the following under the heading "Exceptional Misconduct":

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[8] "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 staff to control such misconduct through use of other corrective actions, as to warrant immediate resort to long-term suspension, or (b) so serious in nature 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." WAC 392-400-260(4).

[9] Although 3200P was never formally submitted as an exhibit to the Hearing Officer, the Board, or the Superior Court, it has been cited several times in the record. *See* CP 13, 28, 60, 107-108; Appellant's Trial Brief 24. In fact, Appellant has directly quoted from

> The following behaviors have been deemed by the District, SEA [(Spokane Education Association, the District's teacher's union)], 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.

Appendix A at 25 (bracketed material added). Six behaviors are then listed, including 'Threaten Staff."

In appealing his expulsion, Appellant never argued that he did not know what the charges against him were, nor did he argue that he did not know which school rule he was accused of violating. There was never any question that threatening a staff member constituted exceptional misconduct. Rather, the issue before the Hearing Officer and the Board was whether Appellant did threaten a staff member, thus, warranting either an expulsion or long-term suspension. Both the Hearing Officer and the Board found that Appellant did threaten a staff member. CP 21, 60. Consequently, the issue before this Court is whether the Board's finding that Appellant threatened a staff member was supported by substantial evidence.

3200P to argue that the District failed to follow its own procedure in disciplining him. CP 13; Appellant's Trial Brief 24. Therefore, for this Court's convenience and so it can properly adjudicate this case, the District has attached 3200P to its brief. *See* RAP 10.4(c). Additionally, it seems appropriate for this Court to take judicial notice of 3200P since it is the cited rule that Appellant was accused of violating.

The Board found that a reasonable administrator could perceive Appellant's "actions, including [his] profanity, posturing, and his agitated state" as threatening. CP 21. A review of the record shows that this finding was supported by substantial evidence:

- Appellant repeatedly referred to Mr. Skidmore as "that mother fucker." CP 27, 64, 95,128.

- Appellant "was calling Skidmore names and using gestures that . . . were aggressive and threatening in nature. These gestures included hitting his chest as he stuck it out and pointing at Skidmore." CP 124.

- Appellant "was swearing and very upset and angry. [And] all of [his] anger was directed at Mr. Skidmore." CP 72.

- Appellant turned "around and g[o]t directly in Mr. Skidmore's face and he postured and swore at him calling him fucking asshole, mother fucker." CP 72, 95.

- Appellant was "almost chest to chest" with Mr. Skidmore when he was calling him fucking asshole, mother fucker. CP 72.

- Appellant told Mr. Skidmore, "[I]f you ever put your hands on me again, you will regret what happens." CP 72, 64, 95.

Therefore, the Board did not violate the disciplinary regulations when it excluded Appellant from Lewis and Clark for threatening Mr. Skidmore—conduct constituting exceptional misconduct under 3200P.

ii. The District also had good reason to believe no other forms of corrective action would work.

School officials may expel a student if "there is good reason to believe that other forms of corrective action would fail if employed." WAC 392-400-275(4). Appellant argues that a school could not long-term suspend a student for that same reason. Appellant's Brief 28. Based on his reading of the regulatory scheme, a student could be expelled—a more severe form of discipline than long-term suspension—for conduct that did not rise to the level of exceptional misconduct, as long as the school had good reason to believe that no other forms of corrective action would work; yet, that student could not be long-term suspended for the same conduct. That doesn't make much sense. A more accurate reading suggests that schools may long-term suspend a student not just when progressive discipline is used, not just when exceptional misconduct is involved, but also when the school has good reason to believe that no other forms of corrective action will work. This common sense approach is particularly appropriate where, as here, Appellant's expulsion was converted to a long-term suspension.

Based on this reading of the regulatory scheme, the record shows that there was good reason to believe that no other forms of corrective action besides long-term suspension would have worked with Appellant.

In particular, the record shows that, along with his threatening behavior, Appellant repeatedly failed to comply with the directions of school personnel and that he had no regard for the rules:

- After being asked to leave the dance, Appellant refused, arguing with Mr. Skidmore and saying "'F this F that' I'm not leaving, you can't make me leave." CP 64, 29, 66

- After being told that he had to stay by one of resource officers while the other went to get Appellant's date, Appellant left the one officer and bolted into the dance. CP 29.

- After being told he was emergency expelled, Appellant said, "I don't care about your fucking rules. You are all a bunch of assholes. . . . I'm not going to listen to you." CP 73.

- After being told he should not come back to school the following Monday, Appellant showed up anyway, having to be escorted off the campus by the resource officers. CP 65

Given Appellant's lack of respect for school personnel and his disdain for school rules, there was good reason to believe that he would not have responded to a less-severe form of corrective action than long-term suspension; thus, justifying the Board's decision to uphold his long-term suspension. Furthermore, the extreme nature of his behavior itself provides ample evidence to believe that other forms of corrective action would not have sufficed. This includes the profane language directed at a school administrator, the length of time in which Appellant's threatening

and disruptive behavior continued, and his continued posturing in a threatening manner.

> 2. *The Board carefully considered the nature and the circumstances of Appellant's violation and found it reasonably warranted a long-term suspension.*

Appellant argues that the "nature and circumstances of [his] violation" did not "reasonably warrant" the length of his long-term suspension. Appellant's Brief at 30; WAC 392-400-260(1). However, the Board carefully considered the events that led to Appellant's long-term suspension and determined that it was reasonably warranted. Although the Board stated Appellant did not intend his actions to be threatening, it also held that a reasonable administrator would have felt threatened by Appellant's actions, "including profanity, posturing, and his agitated state." CP 21.

The Board engaged in thoughtful deliberation, attempting to balance the District's need to ensure a safe and appropriate school environment and respect for staff authority, while at the same time expressing support for Appellant's educational goals. In doing so, it determined that Appellant's actions warranted exclusion from Lewis and Clark. Substantial evidence supports that determination.

However, the Board did not just exclude Appellant from Lewis and Clark:

> *It is also the decision of the School Board to reinstate [Appellant] into Spokane School District immediately,* albeit not at Lewis and Clark High School, so that he can continue his education and have the opportunity to obtain credits towards graduation. School District administrators have been directed to work with [Appellant] while he is on long-term suspension to provide him access to an appropriate School District program, such as Gateway or the ICAN program that would give [Appellant] an opportunity to earn some credits this semester.

CP 21 (emphasis added). The Board was looking out for Appellant. It wanted to make sure that he continued to earn credits while he was excluded from Lewis and Clark. It wanted to make sure that Appellant was given "the best opportunity to gain credits in order to reach his goal of receiving a high school diploma." CP 21. The Board would not have upheld Appellant's long-term suspension unless the nature and circumstances of his actions reasonably warranted it doing so.

D. Appellant's conduct was not protected by the First Amendment.

Appellant argues that the District could discipline him without violating his First Amendment right to free speech if his conduct constituted a true threat or his conduct substantially disrupted the educational process. Appellant's Brief at 32-33. Appellant's conduct was substantially disruptive; therefore, the District did not violate his right to free speech when it disciplined him for such conduct. Additionally, school districts are entitled to discipline students for threatening conduct even if

the conduct does not constitute a true threat. Moreover, Appellant's conduct did constitute a true threat.

1. Appellant's conduct was substantially disruptive.

There is no doubt that Appellant did not "shed [his] constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 736 (1969). However, the Constitution does not allow Appellant to repeatedly refer to Mr. Skidmore as "that mother fucker" while hitting and puffing out his chest. CP 27, 64, 95, 124, 128. Nor does it give him the constitutional right to get in Mr. Skidmore's face and call him a "fucking asshole, mother fucker." CP 72. Yet, Appellant thinks that he had such a right so long as the District didn't call out the police or cancel the dance. Appellant's Brief at 38. Appellant is simply wrong.

"[T]he First Amendment rights of students in the public schools 'are not automatically coextensive with the rights of adults in other settings,' and must be 'applied in the light of the special characteristics of the school environment.'" *Hazelwood Sch. Dist. v. Khulmeier*, 484 U.S. 260, 266, 108 S.Ct. 562, 567 (1988) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S.Ct. 3159, 3164 (1986); *Tinker*, 393 U.S. at 506, 89 S.Ct. at 736.). Just because "the use of an offensive form of expression may not be prohibited to adults," it does not mean "the same

latitude must be permitted to children in public schools." *Bethel*, 478 U.S. at 682, 106 S.Ct. at 3164. Thus, schools "need not tolerate" certain student speech "even though the government could not censor similar speech outside the school." *Hazelwood*, 484 U.S. at 266, 108 S.Ct. at 567.

Under this general framework, the First Amendment does not allow Appellant to speak to and treat Mr. Skidmore—a school official—the way he did with impunity. As one court stated, "[I]nsubordinate speech toward school officials is generally not recognized as protected under the First Amendment." *Acevedo v. Sklarz*, 553 F. Supp.2d 164, 170 (D. Conn. 2008) ("Acevedo's rights to exercise his freedom of speech were not unlimited when he was on school grounds and he was certainly expected to maintain a level of decorum and dignity in his interactions with school officials that he failed to display on June 15, 2006. The tone of his voice and argumentative stature against Zytka could foster an atmosphere of disrespect toward school officials that certainly disrupts the educational process and interferes with the need for maintaining an appropriate level of discipline in public schools.").

"Unlike other instruments of the State, schools are entrusted with a unique role in our society—to mold our children into reasonable and wise adults." *In re Douglas D.*, 243 Wis.2d 204, 238, 626 N.W.2d 725, 743 (2001). Because of this unique role, schools "must inculcate [in students]

the habits and manners of civility" and teach them "the boundaries of socially appropriate behavior." *Bethel*, 478 U.S. at 681, 106 S.Ct. at 3163. Therefore, "[i]nsubordinate speech always interrupts the educational process because it is contrary to principles of civility and respect that are fundamental to a public school education." *Posthumus v. Bd. of Ed. of Mona Shores Public Schools*, 380 F. Supp.2d 891, 902 (W.D. Mich. 2005) (upholding student discipline where a student loudly referred to a school administrator as a "dick").

"Failing to take action in response to such conduct would not only encourage the offending student to repeat the conduct, but also would serve to foster an attitude of disrespect towards teachers and staff." *Id.* And "[t]he First Amendment does not compel 'teachers, parents, and elected school officials to surrender control of the American public school system to public school students.'" *In re Douglas D.*, 243 Wis.2d at 239, 626 N.W.2d at 743 (quoting *Tinker*, 393 U.S. at 526, 89 S.Ct. at 746).

Accordingly, Appellant had no First Amendment right to say what he did to Mr. Skidmore—whereas, the District had every right to discipline Appellant for directing vulgar and threatening words at Mr. Skidmore. Indeed, Appellant acknowledges that the way he treated Mr. Skidmore warranted some kind of discipline. Trial Brief at 23 ("[Appellant] reacted to Mr. Skidmore's physical contact with language

that was against reasonable school rules and would have justified imposition of some level of discipline."). He just disagrees with the severity of the discipline. First Amendment rights, however, do not vary based on the extent of discipline imposed. Appellant's conduct either was or was not protected by the First Amendment. Because Appellant's conduct was substantially disruptive, the District did not violate his First Amendment right to free speech when it disciplined him.

2. A true threat is not required to discipline Appellant.

A school does not have to show that a student's conduct constituted a true threat before it can discipline him or her. The Wisconsin Supreme Court addressed this issue in *In re Douglas D*. In that case, an eighth-grade student was removed from his English class and instructed to complete a creative writing assignment by writing a short essay. *In re Douglas D.*, 243 Wis.2d at 213-14, 626 N.W.2d at 730-31 The student wrote a story that involved an eighth-grade student who had been removed from class by his teacher. *Id.* The student ended up decapitating his teacher and placing her head in her desk draw. *Id.* Because the story appeared to be a threat directed at the student's English teacher, he was suspended; and the police later brought criminal charges against him for disorderly conduct. *Id.*

After being convicted, the student appealed his conviction to the Wisconsin Supreme Court, arguing that his First Amendment right to free speech had been violated. *Id.* at 215, 626 N.W.2d at 731. The court engaged in a true threat analysis and concluded that, although the student's story was distasteful, it did not rise to the level of a true threat. *Id.* at 235-36, 626 N.W.2d at 741. However, the court was quick to say that "[a]lthough the First Amendment prohibits law enforcement officials from prosecuting protected speech, it does not necessarily follow that schools may not discipline students for such speech." *Id.* at 237, 626 N.W.2d at 742. The court went on to say:

> Under the circumstances in the present case, we hold that the school had more than enough reason to discipline Douglas for the content of his story. Although the story is not a true threat, it is an offensive, crass insult to Mrs. C. Schools need not tolerate this type of assault to the sensibilities of their educators or students.

Id. at 239, 626 N.W.2d at 743. Accordingly, schools do not have to prove that a student's conduct rose to the level of a true threat before they can impose discipline for threatening behavior. *See State v. Avila*, 102 Wn. App. 882, 889, 10 P.3d 486, 489-90 (2000) (giving the word "threat" its plain meaning).

3. Appellant's conduct constituted a true threat.

Even though the District need not show that Appellant's conduct constituted a true threat, the District feels compelled to respond to Appellant's true threat argument, given the amount of space he has taken up making that argument.

"A 'true threat' is '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 take the life' of another person." *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215, 1219 (2004) (quoting *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890, 896 (2001)). The speaker does not actually have to intend to carry out the threat; the words simply have to express the intent to inflict harm. *Kilburn*, 151 Wn.2d at 46, 84 P.3d at 1221 "Whether a statement is a true threat . . . is determined in light of the entire context, and the relevant question is whether a reasonable person in the [speaker's] place would foresee that in context the listener would interpret the statement as a serious threat . . . ." *Id.*, 84 P.3d at 1221.

Here is the context in which Appellant made his "you will regret what happens" statement. Appellant had repeatedly failed to comply with Mr. Skidmore's directive to leave the homecoming dance, telling Mr.

Skidmore, "F this and F that. I'm not leaving; you can't make me leave." CP 64. After being escorted out of the building for the first time, Appellant repeatedly referred to Mr. Skidmore as "that Mother Fucker" while pointing at him. CP 27, 64, 95, 128. He was also angrily hitting and puffing out his chest. CP 124.

Then as Appellant was being escorted outside for the second time that night and just before Mr. Skidmore was about to tell Appellant he was emergency expelled, Appellant was "swearing and very upset and angry. [And] all of [his] anger was directed at Mr. Skidmore." CP 72. Once Appellant was informed that he was emergency expelled, he "turn[ed] around and g[o]t directly in Mr. Skidmore's face and he postured and swore at him calling him fucking asshole, mother fucker" CP 72. "He was right almost chest to chest." CP 72. Then he said to Mr. Skidmore, "[I]f you ever put your hands on me again, you will regret what happens." CP 72.

Appellant also said that he did not like how Mr. Skidmore put his hands on him and that he was going to go to the Board. CP 73. Appellant was never disciplined for saying he was going to the Board though. He was disciplined for threatening conduct, including his extreme language and hostile gestures, that culminated in his "you will regret what happens" statement.

Given the context, a reasonable person in Appellant's shoes—someone that has repeatedly referred to Mr. Skidmore as "that mother fucker"; someone that has been aggressively hitting and puffing out his chest; someone who got in Mr. Skidmore's face and called him a "fucking asshole, mother fucker"—would reasonably foresee Mr. Skidmore interpreting his "you will regret what happens" statement; his profane, aggressive language; and his extreme posturing as a serious threat. Such conduct is not protected by the First Amendment.

E. Appellant is not entitled to compensatory education.

Appellant is not entitled to court ordered compensatory education because the District's disciplinary actions were warranted and appropriate, and because the District continually offered educational opportunities to Appellant. However, even assuming arguendo that the District violated Appellant's rights, compensatory education is not warranted given Appellant's consistent refusal to access the educational services offered by the District. "Equity will not decree an act which will not serve a useful purpose." *State ex rel. Schoblom v. Anacortes Veneer, Inc.*, 42 Wn.2d 338, 342, 255 P.2d 379, 381 (1953). Granting Appellant's request for equitable relief in the form of compensatory education would serve no useful purpose. Before Appellant was excluded from Lewis and Clark, during his exclusion. and after his exclusion, Appellant did not take advantage of the

educational resources that the District offered him. There is no reason to believe that he would take advantage of any compensatory education awarded by this Court.

Before Appellant was excluded from Lewis and Clark, he attended only 53% of his classes. Once he was excluded from Lewis and Clark, the District offered him placement in the Open Doors and Gateway to College programs until he could return to Lewis and Clark. Decl. of Daniel Close. He didn't take advantage of that offer. Decl. of Daniel Close. After the Board upheld Appellant's exclusion, the District, in compliance with the Board's decision, once again offered Appellant enrollment in the Open Doors and Gateway to College programs. Decl. of David Crump. Once again, Appellant declined the offer. Decl. of David Crump. Additionally, pursuant to the Board's decision, Appellant could also have attended other schools or programs in the District. Appellant refused all of these opportunities as well. When Appellant returned to Lewis and Clark, he attended only 17% of his classes. He was often absent for several weeks in a row, showing up just before his twentieth consecutive unexcused absence to avoid automatic disenrollment. Decl. of Daniel Close.

At one point, Appellant informed Lewis and Clark that he would be gone for an unspecified amount of time. Decl. of Daniel Close. In an effort to ensure that Appellant kept up in his classes, his teachers went through

the extra effort to compile his homework and leave it in the front office for him to pick up. Decl. of Daniel Close. Appellant picked up his homework only once, and he ultimately never turned that homework in. Decl. of Daniel Close.

Eventually, Appellant voluntarily unenrolled from Lewis and Clark and enrolled in the Open Doors and Gateway to College Programs. However, because he did not attend these programs either, he was unenrolled on May 20, 2016.

Appellant's poor attendance record shows that he has little interest in attending classes and that granting his request for compensatory education would serve no purpose. Additionally, the District should not be compelled to provide additional education to a student who has refused all previous attempts by the District to provide him an education. *See J.L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wn.2d 45, 72, 113 P.2d 845, 857 (1942) ("The purpose of equity is to afford the complainant a full, complete, and adequate remedy, and it will not . . . give the complainant relief against his own vice and folly."). Therefore, Appellant's request for compensatory education should be denied.

F. Appellant is not entitled to attorney's fees.

Because Appellant has no basis in a private agreement or a statute to seek attorney's fees, he relies on equitable grounds. In particular,

Appellant contends that he is entitled to attorney's fees because the District engaged in bad faith conduct. "There are three types of bad faith conduct that warrant attorney's fees: (1) prelitigation misconduct; (2) procedural bad faith; and (3) substantive bad faith." *Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 784, 275 P.3d 339, 354 (2012). The District did not engage in any of this conduct; therefore, Appellant is not entitled to attorney's fees.

"Prelitigation misconduct refers to 'obdurate or obstinate conduct that necessitates legal action' to enforce a clearly valid claim or right." *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 927, 982 P.2d 131, 136 (1999) (quoting Jane P. Mallor, *Punitive Attorneys' Fees for Abuses of the Judicial System*, 61 N.C.L. Rev. 613, 632 (1983)). "Prelitigation misconduct, to be sanctionable by an order to pay the other party's attorney fees, necessarily involves some disregard of judicial authority." *Greenbank Beach and Boat Club, Inc. v. Bunney*, 188 Wn. App. 517, 526, 280 P.3d 1133, 1138 (2012). "The award of attorney's fees for prelitigation misconduct can be compared to a 'remedial fine[] imposed by a court for civil contempt' in that the party acting in bad faith is wasting private and judicial resources." *Rogerson*, 96 Wn. App. at 927, 982 P.2d at 136 (quoting Mallor, *supra* at 633). For example, requiring students to sue a school district to implement desegregation after *Brown v.*

Board of Education constituted prelitigation misconduct. *Bell v. School Bd.*, 321 F.2d 494, 500 (4th Cir. 1963). The District has done nothing like that.

Rather, Appellant is attempting to get attorney's fees based on the District's actions that led to him filing this appeal, claiming they were done in bad faith. Appellant's Brief at 42-43. But "[t]o allow an award of attorney fees based on bad faith in the act underlying the substantive claim would not be consistent with the rationale behind the American rule regarding attorney fees." *Greenbank,* 188 Wn. App. at 527, 280 P.3d at 1139. Therefore, Appellant has no grounds to be awarded attorney fees based on prelitigation misconduct.

"Procedural bad faith is unrelated to the merits of the case and refers to 'vexatious conduct during the course of litigation.'" *Rogerson*, 96 Wn. App. at 928, 982 P.2d at 136 (quoting Mallor, *supra* at 644). A court may find that a party engaged in procedural bad faith based on "dilatory tactics during discovery, failure to meet filing deadlines, misuse of the discovery process, and misquoting or omitting material portions of documentary evidence." *Id.* (citing *Lipsig v. National Student Mktg. Corp.*, 663 F.2d 178, 181 (D.C. Cir. 1980)). The District has not engaged in any kind of dilatory tactics, has not failed to meet filing deadlines, and has not misquoted or omitted material portions of documentary evidence.

Appellant contends that the District improperly referenced several witness statements and included additional information and declarations in its Response Brief. The District's actions in this regard were justified because these statements were necessary to correct Appellant's misrepresentations, because the statements were included in the complete transcript of evidence with no complaint from Appellant, and more importantly, because the Appellant previously cited to these witness statements himself. Moreover, Appellant's Motion to Strike was denied by the Superior Court, and he has failed to appeal that ruling. The District has not engaged in procedural bad faith.

"Substantive bad faith . . . occurs when a party intentionally brings a frivolous claim, counterclaim, or defense with improper motive." *Rogerson*, 96 Wn. App. at 929, 982 P.2d at 136. A claim is frivolous only if it "cannot be supported by any rational argument on the law or facts." *Hanna v. Margitan*, 193 Wn. App. 596, 612, 373 P.3d 300, 308 (2016) (quoting *Rhineheart v. Seattle Times, Inc.*, 59 Wn. App. 332, 340, 798 P.2d 1155, 1160 (1990)). Moreover, merely bringing "a frivolous claim is not enough, there must be evidence of an 'intentionally frivolous [claim] brought for the purpose of harassment." *Rogerson*, 96 Wn. App. at 929, 982 P.2d at 136 (quoting *Pearsall-Stipek*, 136 Wn.2d 255, 267, 961 P.2d 343, 349 (1998). The District's defense of it decision to discipline

Appellant is not completely irrational, nor has the District defended its decision for the purpose of harassing Appellant. Therefore, the District has not engaged in substantive bad faith.

VII. CONCLUSION

The District acted appropriately when it excluded Appellant from Lewis and Clark. Appellant was defiant. He repeatedly referred to Mr. Skidmore as "that mother fucker" while sticking out his chest and hitting it. He got in Mr. Skidmore's face and called him a "fucking asshole, mother fucker." He told Mr. Skidmore, "If you ever put your hands on me again, you will regret what happens." His conduct was threatening and warranted discipline. And Appellant had no protected First Amendment right to treat a school administrator the way he did.

Moreover, even though Appellant's behavior violated District policy and justified an expulsion, the District still gave Appellant opportunities to receive educational services during the period of his exclusion. Appellant never took advantage of those opportunities. In fact, Appellant never took advantage of any of the educational services the District provided him. From the time he enrolled at Lewis and Clark to the day he voluntarily unenrolled, Appellant hardly attended any classes, belying his supposed determination to graduate high school. Accordingly, Appellant is not entitled to any of the relief he has requested.

DATED this 23rd day of February, 2017.

Respectfully submitted,

STEVENS | CLAY

By: _____
GREGORY L. STEVENS, WSBA # 15627
Attorney for Spokane School District

CERTIFICATE OF SERVICE

I do hereby certify that on this 23rd day of February 2017, I served a true and correct copy of the above and foregoing SCHOOL DISTRICT'S RESPONSE BRIEF on the following, in the method indicated:

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

___ U.S. mail
___ Overnight mail
X Hand-delivery
___ Facsimile transmission

Kimberly N. Reber

KIMBERLY N. REBER

APPENDIX A:
SPOKANE PUBLIC SCHOOLS' PROCEDURE 3200

Spokane Public Schools
excellence for everyone

Procedure No. 3200
Effective Date: 10/06/2005

Subject: Student Rights and Responsibilities Procedure

I. Student Rights

A. Expression

B. Assembly

C. Search and Seizure

D. Unlawful Discrimination

E. Due Process

F. Notification of Threat of Harm

II. Disciplinary Action

A. Definitions

B. Hearing Authority

C. Other Discipline Information

D. Short-Term Suspension

E. Long-Term Suspension

F. Expulsion

G. Emergency Actions

III. Disciplinary Actions Relating to Specific Behaviors

A. Drug/Alcohol

B. Tobacco

C. Exceptional Misconduct

IV. Secondary Activities Code

I. Student Rights

A. Student Expression: Includes speech, writing, clothing, gestures, and other expressive conduct or messages.

1. Students may present their personal opinions insofar as these expressions are in an appropriate manner and do not disrupt the educational process.

2. The student who publishes and/or distributes written or duplicated material on the school premises is responsible for its content. Such material must bear identification as to the author, the publishing agency, and distributing organization.

a. The distribution of such material must take place at a reasonable time and location approved by the principal or his/her designee and must not interfere with the orderly school process.

b. Such expressions must be free of libel, obscenity, and defamatory statements against persons and must not contradict the mission of Spokane Public Schools (i.e. advocate harassment, discrimination, or commission of illegal acts).

c. A student in his/her written or oral expression shall not advocate or encourage the commission of crime.

3. Commercial solicitation is not student expression. It may be conducted only as authorized by Board policy and District regulations.

B. Assembly: Orderly procedures for assembly shall include the following:

1. Shall be conducted in an orderly manner.

2. Shall not interfere with the educational process.

3. Shall not impede the free movement of traffic.

If any assembly is not so conducted, students participating shall be subject to disciplinary actions.

When students participate as members of approved student body organizations, they shall assemble as authorized by the principal or his/her designee.

C. Search and Seizure: In the event of a search or seizure the following procedures shall apply:

1. If a student or his/her property is to be searched, it is recommended that a witness be present.

2. Based on administrative discretion, the student may or may not be present during the search.

3. Items which disrupt or interfere with the educational process may be temporarily removed from the student's person. Contact will be made with school security to take possession of any illegal items.

4. A school principal, vice-principal, or principal's designee may search all student lockers (or all lockers within a hall or bay as part of an overall search) at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular students' violation of the law or school rule. If the school principal, vice-principal or designee, as a result of the search, develops a reasonable suspicion that a certain container or containers in any student locker contains evidence of a student's violation of the law or school rule, a student's container(s) may be searched.

D. Unlawful Discrimination, Harassment, Intimidation, or Bullying Complaint Procedure:

1. General Information

The school district is committed to prompt and fair resolution of discrimination, harassment, intimidation or bullying complaints. The following informal and formal procedures are designed to help stop these behaviors once it is reported. The District encourages use of the informal process, but the formal process can be used at any time. All individuals who are aware of or who should know about harassment or discrimination, intimidation or bullying are responsible for reporting to and cooperating with District officials. The District will endeavor to handle complaints under this procedure discreetly.

2. Informal Complaint Process

a. When to Use the Informal Complaint Process: An informal complaint can be brought at any time. It is a voluntary method for trying to get the alleged behavior(s) to stop. A formal complaint can be filed at any time before, during, or after any informal process is used.

b. How to Use the Informal Complaint Process:

(1) The purpose of bringing an informal complaint is to use an approach for stopping the alleged behavior(s) without a fixed, rigid process. The informal complaint process thus does not have rigid steps. Instead, the process focuses on the wants and desires of the complainant. The District encourages the use of the Equal Opportunity Officer as a resource for ideas on how to informally resolve allegations.

(2) Informal methods might include the following if desired by the complainant:

(a) Talking directly with the perpetrator to say that the behavior is unwelcome;

(b) Using a neutral third party, such as the Equal Opportunity Officer, to talk with the perpetrator;

(c) Writing a letter to the alleged perpetrator, identifying what happened and how it made the complainant feel;

(d) Putting a copy of the District's Student Rights and Responsibilities policy in the alleged perpetrator's mailbox or locker;

(e) Using a mediator to meet with the alleged perpetrator. Any neutral third party or mediator is encouraged to use the Equal Opportunity Officer as a resource during the informal process.

3. Formal Complaints

a. How to File Formal Complaints:

(1) The complainant needs to fill out the District discrimination, harassment, intimidation, or bullying reporting form (available in the Equal Opportunity Office and at all schools), identifying the specific acts, conditions, and circumstances of the alleged behavior(s).

(2) Students need to give the reporting form to a building administrator or Executive Director of Teaching and Learning Services.

(3) The Equal Opportunity Officer can provide more information if there is a question about how to file.

b. How Formal Complaints are Handled:

(1) Who is Responsible for Handling the Complaint: The principal or one of their designees are the people responsible for investigating and resolving complaints. Additional assistance and resources for investigations may be provided by: Equal Opportunity Officer; Associate Superintendent of Teaching & Learning Services. All formal complaints will be filed with the Equal Opportunity Officer.

(2) What Happens to the Complaint: The person responsible for evaluating the complaint shall promptly and fairly investigate the complaint. When done with the investigation, the responsible person shall write a report to the superintendent.

The superintendent or designee shall respond to the complainant as soon as possible, but within 30 days of receiving the complaint. The response shall state: (a) whether the District denies the allegations; or (b) what the District will do to make sure the behavior does not occur again (in other words, the corrective measures--such measures will be imposed within 30 days).

If it is not reasonable to do a response within 30 days, the complainant will be so notified.

(3) What if the Complainant is Not Satisfied with the superintendent's Response: If the complainant does not like the superintendent's

response, an appeal may be made to the School Board of Directors by filing a written notice of appeal on or before the tenth day following the date the complainant received the superintendent's response. (WAC 392-190-070 and 075).

(4) What the District Can Do to Make Sure Harassment Does Not Occur Again:

(a) Progressive discipline or counseling for the student(s)

(b) Additional training on discrimination, harassment, intimidation, or bullying

(c) Restorative justice such as letters of apology or community service

(d) Loss of privileges

(e) Student suspension

(f) Denial of access to school property or activities for others

(g) Transfer of locations for students (if available)

(h) Reporting to Child Protective Services for child abuse

The District will take action from the above list or will take any other action based on what the District believes is reasonable action to get the behavior to stop based on what is available under the state and federal laws and regulations.

(5) What If Discrimination, Intimidation, or Bullying Continues: If the complainant does not believe the behavior(s) has stopped after action is taken, the complainant needs to make another complaint pursuant to this procedure. If the District concludes or is aware that the behavior(s) is continuing, then the District will take more severe corrective action than was taken previously. Again, the purpose of the action by the District is to do what is reasonable to stop the behavior(s).

c. Other Complaint Processes Available to Obtain Other Remedies: A complainant may have the option to bring a legal action directly against the perpetrator in a court of law, on his/her own, to obtain any other remedies against the perpetrator such as monetary damages.

d. Identification, Evaluation, or Placement of Students with Disabilities: Different procedural safeguards are in place for complaints regarding the identification, evaluation, or placement of students with disabilities.

4. Dissemination and Implementation

a. All schools will maintain records of the numbers and kinds of formal incidents of discrimination, harassment, intimidation, and bullying and forward those

reports to the Equal Opportunity Officer on a monthly basis to assist in monitoring Policy and Procedure No. 3200's effectiveness and to determine future training needs.

b. Annual District training sessions may be provided to support areas of anti-discrimination, harassment, intimidation, and bullying which need further efforts as generated from reports, surveys, and student input.

c. Options will be generated to develop information for parents/guardians, volunteers, volunteer coaching staff, student teachers, and high school students who work with other students regarding Policy and Procedure No. 3200.

d. Student information and discussions will be provided to K-12 students through lessons and activities at the school site.

E. Due Process--Procedure for Discipline Appeals:

1. Discipline or Short-term Suspension Appeal Procedure

a. See II.A.5 for definition of short-term suspension.

b. Any student, parent(s)/guardian(s) who wishes to appeal the imposition of discipline or a short-term suspension shall have the right to an informal conference with the building principal or his/her designee for the purpose of resolving the appeal. The employee whose action is being appealed shall be notified of the initiation of an appeal as soon as reasonably possible. During such conference, the student or parent(s) shall be subject to questioning by the building principal or his/her designee and shall be entitled to question school personnel involved in the matter being appealed.

c. Further request for review of appeal to superintendent/designee: Subsequent to the building-level appeal meeting, (II.E.I), the student or parent(s)/guardian(s), upon two (2) school days prior notice, shall have the right to present a written and/or oral appeal to the superintendent of the District or his/her designee.

d. Further Request for Review of Appeal to School Board: If the appeal is not resolved pursuant to II.E.1.a and II.E.2.b, the student or parent(s)/guardian(s), upon two (2) school business days prior notice, shall have the right to present a written and/or oral appeal to the Board of Directors during the Board's next regular meeting. The Board shall notify the student or parent(s)/guardian(s) of its response to the appeal within ten (10) school business days after the date of the meeting. The discipline action or short-term suspension shall continue notwithstanding the implementation of the appeal procedure set forth in this section unless the principal or his/her designee elects to postpone such action.

2. Long-term Suspensions/Expulsions Appeal Procedure

a. See II.A.5 for definition of long-term suspension.

b. Notice/Waiver of Hearing: Prior to a long-term suspension/expulsion, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and his or her parent(s)/guardian(s). The notice shall:

(1) Be written in English or, to the extent feasible, in the predominant language of the student and parent(s)/guardian(s) if they speak mainly in a language other than English.

(2) Specify the alleged misconduct and the District rule(s) or policy alleged to have been violated.

(3) Set forth the right of the student and/or his or her parent(s)/guardian(s) to a hearing for the purpose of contesting the allegations(s).

(4) Set forth the facts that:

(a) A written request for a hearing must be received by the District's hearing authority or by his or her office on or before the expiration of the third school business day after the receipt of the suspension/expulsion notice.

(b) If such a written request is not received on or before the expiration of the third school business day, the right of a hearing will be deemed to have been waived and the proposed suspension/expulsion will be imposed without further opportunity to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing rights should be included in the notice.

(c) If the student and/or parent(s)/guardian(s) wishes to request a hearing, they shall do so in writing to the hearing authority (II.B) and shall ask for the hearing to take place within three (3) school business days after the receipt of the request. The reply shall specify whether or not the student plans to have legal counsel present at the hearing.

(5) If the written request for the hearing is not received on or before the expiration of the third school business day, the District may deem the student and/or parent(s)/guardian(s) to have waived hearing rights without any further opportunity of challenge.

(6) In order to ensure receipt of the written notice, it is recommended that principals utilize both certified and regular mail in difficult situations. A two-day mail delivery period should be added to the three school business days (five total days) for estimating the outside limit for a hearing request. Direct delivery of the notice would reduce the hearing request period to three school business days.

(7) Notice of the details of the suspension/expulsion shall be sent immediately to the superintendent and/or his/her designee.

c. Prehearing and Hearing Process: If the request for a hearing is received within the time provided, the hearing authority shall schedule a hearing to commence within three (3) school business days after receipt of the request. The student and his/her parent(s)/guardian(s) shall have the right to:

(1) Inspect, in advance of the hearing, any documentary and other physical evidence which the school district intends to introduce at the hearing.

(2) Be represented by legal counsel.

(3) Question witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(a) That the District made a reasonable effort to produce the witness and is unable to do so or,

(b) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible District official(s) or the student of retaliation against the student if he or she appears as a witness. (WAC 180-40-285)

(4) Present his/her explanation of the alleged misconduct.

(5) Make any relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

d. The designee of the District assigned to present the District's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence which the student and his/her parent(s)/guardian(s) intend to introduce at the hearing.

e. Hearing Decision: The hearing authority shall determine the facts solely on the evidence presented at the hearing. He/she shall set forth the findings of fact and conclusions in writing. Further, he/she shall determine whether the disciplinary action is supported by the evidence. He/she may impose such lesser disciplinary action as appears reasonable and appropriate. The findings and conclusions shall be provided to the student's legal counsel or, if none, to the student and his/her parent(s)/guardian(s).

f. A tape recording shall be made of the hearing by the District. Either side, at its own expense, may make a record or verbatim transcript of the hearing.

3. Emergency Expulsion Appeal Procedure

a. A student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations - provided: That the superintendent/designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the

student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion shall continue until rescinded by the superintendent/designee or until modified or reversed pursuant to the hearing provisions.

b. Hearing procedures for an emergency expulsion will be similar to those described in Procedure E.2 (Long-term Suspension Appeal) except for the following:

(1) A written request for hearing must be received by the school district on or before the expiration of the tenth (10th) school business day after receipt of the notice of opportunity for a hearing.

(2) If a request for a hearing within the prescribed ten (10) school business days is received, the school district will immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the third school day after receipt of the request.

(3) Within one school business day after the date upon which the hearing concludes, a decision as to whether or not the expulsion shall be continued shall be rendered and the student and his or her parent/guardian shall be notified thereof by depositing a certified letter. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether or not the emergency situation giving rise to the emergency expulsion continues) and whether or not the emergency expulsion shall be continued or a lesser form of corrective action is to be imposed.

(4) An emergency expulsion may be continued following the hearing on the basis that the emergency situation continues and/or as corrective action for the action(s) giving rise to the emergency expulsion in the first instance.

4. Appeals From Hearing Authority's Decision

a. Appeal from the hearing authority's decision which imposes either a long-term suspension or an expulsion upon a student shall be made as follows:

(1) The student and his/her parent(s)/guardian(s) shall have the right to appeal the decision of the hearing authority to the Board of Directors. The notice of appeal shall be in writing and shall be addressed to either the superintendent/designee or to the office of the hearing examiner, within three (3) school business days after date of receipt of the hearing authority's decision.

(2) If the appeal is not made within the required three (3) school business days period, the suspension/expulsion will be imposed as of the calendar following expiration of the three (3) school business days period.

(3) If a timely appeal is taken to the Board of Directors, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

(b) An emergency expulsion may be continued during the appeal period for so long as the student continues to pose an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process of the student's school; and

(c) Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion.

(4) An appeal from the decision of the Board of Directors to impose or affirm the imposition of a long-term suspension or an expulsion shall be to the Superior Court. Whether or not the decision shall be stayed pending the appeal to the court shall be at the Board's discretion unless ordered otherwise by the court.

b. Hearing Before the Board of Directors: If a notice of appeal is received within the required three (3) school business days, the Board shall schedule and hold an informal conference within ten (10) school business days after receipt of the appeal notice to review the matter. The purpose of the meeting shall be to meet and confer with the parties in order to decide on the most appropriate means of disposing of the appeal as provided for herein.

(1) The student or the student's parent(s)/ guardian(s) or legal counsel shall be given the right to be heard and shall be granted the opportunity to present such witnesses and testimony as the Board deems reasonable. The Board shall agree to one of the following procedures prior to adjournment or recess:

(a) Study the hearing record or other material submitted and render its decision within ten (10) school business days after the date of the informal conference, or

(b) Schedule and hold a meeting to hear further arguments based on the record before the Board and render its decision within fifteen (15) school business days after the date of the informal conference, or

(c) Schedule and hold a meeting within ten (10) school business days after the date of the informal conference for the purpose of hearing the case de novo.

(2) In the event the Board of Directors elects to hear the appeal de novo, the following rights and procedures shall govern the proceedings:

(a) The student and his/her parent(s)/guardian(s) shall have the right to:

(i) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing,

(ii) Question witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

- That the District made a reasonable effort to produce the witness and is unable to do so or,

- That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible District official(s) or the student of retaliation against the student if he/she appears as a witness. (WAC 180-40-285)

(iii) Present his/her explanation of the alleged misconduct, and

(iv) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires;

(b) The designee(s) of the school district assigned to present the District's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his/parent(s)/guardian(s) intend to introduce at the hearing; and

(c) Either a tape-recorded or verbatim record of the hearing shall be made.

c. School Board Decision: Any decision by the School Board to impose or affirm, reverse or modify the imposition of discipline, suspension or expulsion upon a student shall be made:

(1) Only by those School Board members who have heard or read the evidence;

(2) Only by those Board members who have not acted as witnesses in the matter; and

(3) Only at a meeting at which a quorum of the Board is present and by a majority vote.

5. Application for Readmission

   a. Any student who has been given a long-term suspension, an expulsion, or an emergency expulsion may make an "Application for Readmission" by contacting the principal or Student Support Services coordinator.

   b. The application shall include the following:

      (1) Reasons why the student wants to return and why he/she believes that readmission should be considered.

      (2) New evidence, such as risk assessment, counseling, treatment, etc., which supports the student's request.

      (3) A statement from the parent(s)/guardian(s) in support of the student's request.

      (4) Such other information as the student believes will be helpful to the principal/coordinator of Student Support Services in determining whether or not readmission should be granted. If the principal/coordinator of Student Support Services grants the readmission, he/she shall establish the conditions of the re-entry and continuation in school.

   c. Application Following Firearm/Dangerous Weapon Violation

      (1) The regular application for readmission process is followed but the application should be sent to the Coordinator of Student Support Services of the requested placement level. This applies to students expelled from any District, including Spokane Public Schools, for this reason.

      (2) Verification of any psychosocial or legal requirements must be available (e.g. community service, counseling, probation) in written form.

      (3) A formal conference with the student, parent/guardian, Student Support Services Coordinator, receiving principal, and a representative of the superintendent must be held prior to placement.

      (4) Final decision for readmission rests with superintendent.

F. Notification of Threats of Violence Or Harm:

   1. Staff, students, volunteers, and others involved in school activities have the responsibility to report threats of violence or harm to designated school officials. Threats of violence or harm are communications that create reasonable fear of physical harm to a specific individual or individuals, communicated directly or indirectly by any means. Based on the significance and credibility of the threat, it shall be reported to law enforcement or DSHS. Staff may involve a Student Support Services Coordinator and other professionals in evaluating the threat and the needs of the person making the threat. Consultation with or referrals to community-based professionals and services are encouraged where appropriate.

Student Support Services will communicate with principals on all relevant assessment results.

2. Under the Family Educational Rights and Privacy Act (FERPA), the District may only release student records, including those involving threats of violence or harm, with parent or adult student permission or under limited conditions. For that reason, the District will not identify, from student records, students who have made threats of violence or harm when notifying the subjects of the threats, except under the following conditions.

   a. The parent/guardian or adult student has given permission to disclose the student's identity or other information to the subject of the student's threat.

   b. The identity of the student and the details of the threat are being disclosed to relevant District staff who have been determined to have legitimate educational interest in the information.

   c. The identity of the student or the details of the threat are being released because the release of information is necessary to protect the health or safety of the student or other individuals. This exemption is to be strictly construed pursuant to federal regulations.

   d. The District is responding to a court order or subpoena. Generally the District must make a reasonable effort to notify the parent(s)/guardian(s) of the students or adult student of the subpoena in advance of complying, so that the family can seek protective action.

3. Relevant information about the threat that does not improperly identify a student shall be communicated to the subject of the threat and the subject's parent(s)/guardian(s) based upon a threat evaluation determination by the principal and/or security. The subject and the subject's parent(s)/guardian(s) may be advised that if law enforcement has been involved in the matter, the law enforcement agency may have more information.

4. To promote the safety of all concerned, the principal may consult with a Student Support Services coordinator, and determine if classroom teachers, school staff, school security, and others working with the student(s) involved in the threat circumstance, should be notified. Subject to the confidentiality provisions cited above, principals shall consider all available information when determining the extent of information to be shared, including prior disciplinary records, official juvenile court records, and documented history of violence of the person who made the threat.

5. When considering the appropriate discipline for a student who has made a threat of violence or harm, the student's prior disciplinary records shall be taken into account. All forms of discipline shall be considered, based on the credibility and significance of the threat. Discipline shall only be imposed on students with disabilities consistent with policy and the legal requirement for special education.

6. If the threat by a student was significant and credible enough to warrant expulsion, the student may only be readmitted to the District through the

readmission application process provided for in District Policy 3200 and agreed to in the collective bargaining agreement

II. Disciplinary Action

A. Definitions:

1. Alternative Corrective Action--No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school has first imposed an alternative corrective action or punishment reasonably calculated to modify his/her conduct and, in addition:

   a. Provided notice to the student's parent(s)/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)/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 shall 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; providing more individualized or remedial instruction; preparing the juvenile for employment with specific vocational courses or work experience, or both, and assisting the student or parent(s)/guardian(s) to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school. (RCW 28A.27.020; WAC 180-40-245)

2. Disciplinary Action--"Disciplinary action" as used in this document, shall mean: discipline, suspension (short-term and long-term), expulsion, and emergency action, administered in accordance with school and District policy. In the administration of such disciplinary action, the goal shall be to promote more responsible behavior on the part of the student. Disciplinary action shall not include additional class work or the lowering of grades.

3. "Discipline" shall mean all forms of corrective action other than suspension and expulsion and includes detention and the exclusion of a student by a teacher or administrator from the student's individual classroom and instructional or activity area for all or any portion of the balance of the school day, or until the principal or designee and teacher have conferred, whichever occurs first: PROVIDED, that except in emergency circumstances, the teacher shall have first attempted one or more alternative forms of corrective action and PROVIDED FURTHER, that in no

event without the consent of the teacher shall an excluded student be returned during the balance of the particular class or activity period from which the student was initially excluded, or until the principal or designee and the teacher have conferred. The excluded student shall remain in the custody of a school district employee for the balance of any such exclusion. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of the school district, i.e. extracurricular activities.

4. "Detention" shall mean detaining a student beyond the student's regular school day and is permissible provided parent(s)/guardian(s) have been notified and arrangements have been made regarding the student's need for transportation home. In all cases of detention, the school district must be satisfied that arrangements have been made for the student's transportation home.

5. "Suspension" shall mean a denial of attendance (other than the exclusion of a student as defined under "Discipline") at any single subject or class or at 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.

   a. "Short-term suspension shall mean a suspension for any portion of a school day up to and not exceeding ten (10) consecutive school days.

   b. "Long-term suspension" shall mean a suspension which exceeds ten consecutive school days and could continue until the end of the semester/trimester. Suspension procedures sometimes differ for students with disabilities. Procedures should be considered the same unless otherwise specified in the following sections.

6. "Expulsion" shall mean a denial of attendance at any single subject or class or at any full schedule of subjects or classes for an indefinite period of time. An expulsion 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. Expulsion procedures sometimes differ for students with disabilities. Procedures should be considered the same unless otherwise specified in the following sections.

7. "Substantial Disruption" shall mean a threat to the safety or well-being of others in the class or activity.

8. IEP--"Individual Education Program" refers to the instructional planning document which is constructed between the school and parent(s)/guardian(s) for a student determined eligible as disabled under WAC 392-172.

9. "School Business Day" shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminate upon the closure of said office for the calendar day.

10. Parent(s)/GUARDIAN(S)--"Parent" shall refer to a natural parent, an adoptive parent, or the legal guardian of the student.

11. "Persistently Dangerous School"

    a. A school will be considered "persistently dangerous" if it meets both of the following criteria for three consecutive reporting years:

        (1) Expulsions for federal Gun-Free Schools Act violations:

School Size	**Minimum # Expulsions**
Up to 1000 enrolled students	2 per reporting year
1001 to 1500 enrolled students	3 per reporting year
1501 to 2000 enrolled students	4 per reporting year
2001 to 2500 enrolled students	5 per reporting year
2501 to 3000 enrolled students	6 per reporting year
3001 to 3500 enrolled students	7 per reporting year
More than 3500 enrolled students	8 per reporting year

        (2) Expulsions for other violent criminal offenses:

            (a) For schools with 300 or less enrolled students: three expulsions per reporting year.

            (b) For larger schools, one expulsion for every 100 enrolled students, or a fraction thereof, per reporting year.

    b. The identification of persistently dangerous schools will occur on an annual basis only, by August 1 of each year. A school will be identified as persistently dangerous for the full duration of time the school meets the criteria defining it as persistently dangerous.

    c. Once a school is determined by the state to be persistently dangerous according to the definition above, the school district must, at least 14 calendar days before the start of the subsequent school year:

        (1) Notify parents of each student attending the school that the school has been identified as persistently dangerous, and

        (2) Offer students the opportunity to transfer to a public school within the school district that is not persistently dangerous.

d. By the start of the subsequent school year, the school district must complete the transfer for those students who accept the offer.

e. The school district must allow the transfer to remain in effect as long as the student's original school is identified as persistently dangerous.

f. Data necessary to identify persistently dangerous schools will be collected each June as part of the Office of Superintendent of Public Instruction's Weapons in Schools data collection effort.

B. Hearing Authority:

1. For most suspension/expulsion hearings, the hearing authority shall be an impartial central staff member appointed by the superintendent. The hearing authority shall not be a witness, and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

2. Correspondence to the hearing authority for all disciplinary hearings shall be addressed to:

   Hearing Authority, Spokane Public Schools
   Attention: Executive Director of Student Support Services
   North 200 Bernard Street
   Spokane, WA 99201

C. Other Discipline Information:

1. Exercise Of Authority--When appropriate, school faculty and administration are encouraged to attempt to resolve student disciplinary issues at the building level.

2. Exclusion From Class--If informal procedures do not correct the disciplinary problem, the teacher shall have the right to exclude the student from all or any portion of the balance of the school day, or until the principal or designee and teacher have conferred, whichever occurs first.

3. Corporal Punishment--Discipline consisting of spanking, striking a student on the head, or any form of physical or corporal punishment shall not be administered to any student of the Spokane School district. (RCW 28A.87.140)

4. Course Grades and/or Graduation Requirements--No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grades or graduation requirements.

5. Building Discipline Plans--The principal or designee and certificated employees in each school building in the District shall confer at least annually in order to develop and/or review building discipline standards and uniform enforcement of those standards. Such procedures shall make an attempt to involve the parent(s)/guardian(s) and the student in the resolution of their student's discipline problems. District and building rules and regulations regarding discipline

procedures shall be annually available to each pupil, teacher, and parent. (RCW 28A.58.1011[3])

D. Short-term Suspension:

1. CIRCUMSTANCES--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. As a general rule, no student shall be suspended for a short term unless another form of corrective action or consequence reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.

2. Length of Suspensions

   a. Kindergarten through grade four: No student in kindergarten through grade four shall be subject to short-term suspension(s) of more than ten (10) school days during any single trimester, provided that such limitation may be exceeded if provisions are made for such suspensions in the Individual Educational Program (IEP) of a student with disabilities. No loss of academic grade shall be imposed by reason of such suspension(s).

   b. Grade five and above: No student in grade five and above shall be subject to short-term suspensions for more than a total of fifteen (15) school days in any single semester or ten 10 days in a trimester.

   c. Make-up Work: After a short-term suspension the student shall have the opportunity to make up assignments and tests missed by reason of the short-term suspension if they have a substantial effect on the student's semester grades or would preclude the student from receiving course credits.

3. Prior Conference--Prior to the imposition of a short-term suspension, a conference shall be conducted to provide the student with:

   a. Oral or written notice of the alleged misconduct and/or rule violation;

   b. Oral or written explanation of the corrective action or punishment which may be imposed; and

   c. Oral or written explanation of evidence in support of the allegations;

   d. Opportunity for the student to present an explanation.

4. Notice--If the suspension is to exceed one (1) school day, the parent(s)/guardian(s) shall be notified of the reason for the suspension and its duration orally and/or by U.S. Mail as soon as reasonably possible. The notice shall indicate the opportunity for an informal conference and that the suspension may possibly be reduced as a result of such conference. Notice of any suspension and the reasons therefore shall be reported in writing to the superintendent and/or his/her designee within twenty-four (24) hours after imposition of the suspension.

E. Long-term Suspension:

1. CIRCUMSTANCES

   a. 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. 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/her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature.

2. Length of Suspension

   a. Kindergarten through grade four: No student in kindergarten through grade four shall be subject to long-term suspension.

   b. Grade five and above: No single long-term suspension shall be imposed on a student in grade five and above in such a manner which causes the student to lose academic grades or credit for in excess of one (1) semester during the same school year. A long-term suspension can be from eleven (11) days until the end of the trimester or semester.

3. Notice--The parent(s)/guardian(s) shall be notified of the reason for the suspension and its duration orally and/or by U.S. Mail as soon as reasonably possible. This notice shall include information regarding the student's rights of appeal and ability to make application for readmission. All long-term suspensions and the reasons therefore shall be reported in writing to the superintendent of the school district and/or his/her designee within twenty-four (24) hours after the imposition of the suspension. This notice shall be signed by the building principal or designee in the principal's absence.

4. Notice Of Hearing Rights--(See paragraph I.E.2)

5. Application for Readmission--(See paragraph II.E.3)

6. Special Education Procedures--(See Procedure 4161)

F. Expulsion:

1. Circumstances--The nature and circumstances of the violation must reasonably warrant the harshness of expulsion. No student shall be expelled unless other forms of corrective action or discipline reasonably calculated to modify his/her conduct have failed or unless there is good reason to believe that other forms of corrective action or discipline would fail if employed.

2. Notice--The parent(s)/guardian(s) shall be notified of the reason for the expulsion orally and/or by U.S. Mail as soon as reasonably possible. This notice shall include notice of the student's rights of appeal and ability to make application for readmission. All expulsions and the reasons therefore shall be reported in writing to the superintendent of the school district and/or his/her designee within

twenty-four (24) hours after the imposition of the expulsion. This notice shall be signed by the building principal.

3. Notice And Hearing Rights--(see paragraph I.E.2)

4. Application For Readmission--(see paragraph II.E.3)

5. Notification To Appropriate Authorities--Once a student has been expelled in compliance with these rules, the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, the local juvenile authorities acting pursuant to RCW chapter 13.04 in order that such authorities may address the student's education needs.

6. Special Education Procedures--(Refer to Procedure 4161)

G. Emergency Actions:

1. Emergency Removal from Class or Activity

a. Notwithstanding any other provisions of these regulations, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the principal or a designated school authority if the teacher or administrator has good and sufficient reason to believe the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the student's school. The removal shall continue only until:

(1) The danger or threat ceases, or

(2) The principal/designee acts to impose discipline, impose a short-term suspension, initiate a long-term suspension or an expulsion, or impose an emergency expulsion pursuant to procedures set forth in these regulations.

b. The principal/designee shall meet with the student as soon as reasonably possible following the student's removal and take or initiate appropriate corrective action or disciplinary action. In no case shall the student's opportunity for such meeting be delayed beyond commencement of the next school day. Prior to, or at the time the student is returned to the class(es), subject(s), or activity(ies), the principal/designee shall notify the teacher or administrator who removed the student of the action taken or initiated.

c. Special Education Provisions: Students with disabilities are subject to emergency removal under the same conditions and circumstances as for non-special education students.

2. Emergency Expulsion

a. Notwithstanding any other provision of these regulations, a student may be expelled immediately by the superintendent or his/her designee in emergency situations if he/she has good and sufficient reason to believe the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion shall continue until rescinded by the superintendent or his/her designee or until modified or reversed, pursuant to the hearing or appeal procedures set forth herein.

b. Special Ed Procedures: (See Procedure 4161)

c. Hearing/Waiver of Hearing:

(1) General Notice Requirements: The student and his/her parent(s)/guardian(s) shall be notified of the student's emergency expulsion and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s)/guardian(s) within twenty-four (24) hours of the expulsion and documenting delivery by obtaining his/ her signature acknowledging receipt of the written certification of the person making the delivery or (b) by certified letter(s) deposited in the United States Mail within twenty-four (24) hours of the expulsion: PROVIDED, that if the emergency expulsion is based upon a failure to comply with the state immunization law (see chapter 180-38 WAC) the notice must be received by the student's parent(s) or guardian(s) prior to the emergency expulsion of the student regardless of the method of delivery. In addition, if the notice is by certificated letter, reasonable attempts shall be made to notify the student and his/her parent(s)/guardian(s) by telephone or in person as soon as reasonably possible.

(2) Such oral and written notice of the opportunity for a hearing shall follow procedures and contain the same information as set forth under "Hearing Procedures for Long-Term Suspension and Expulsions", (paragraph I.E.2) except for the time limit on the reply which shall be as provided in paragraph (3) hereafter.

(3) The student or parent(s)/guardian(s) shall reply to the notice in writing and shall request a hearing within ten (10) school business days after the receipt of the notice. The request for the hearing shall be addressed to the hearing authority of the District. If such request is not received within the prescribed time, then the right to a hearing shall be deemed to have been waived and the emergency expulsion shall be continued as deemed necessary by the school district without any further opportunity for the student and/or his parent(s)/guardian(s) to contest the matter.

d. Prehearing and Hearing Procedures: The procedures set forth under the section on "Hearing Procedures for Long-Term Suspensions and Expulsions", (paragraph I.E.2) shall apply, except for the time limit on the hearing decision, which shall be as follows:

(1) Within one (1) school business day after the date on which the hearing concludes, a decision as to whether or not the expulsion is to continue shall be rendered, and the student's legal counsel, if none, the student and his/her parent(s)/guardian(s) shall be notified by a certified letter in the U.S. Mail.

(2) Hearing Decision: The hearing decision shall set forth the findings of fact, the conclusions (including whether or not the emergency situation continues), and whether or not the emergency expulsion shall be continued or a lesser form of disciplinary action imposed.

(3) An emergency expulsion may be continued following the hearing on the basis that the emergency situation continues and/or as disciplinary action for the situation giving rise to the emergency expulsion in the first place.

III. Disciplinary Interventions Relating To Specific Behaviors

A. Use and/or Possession of Illicit Drugs/Alcohol:

1. Students who violate Policy 3200 by possessing/using/or being under the influence of illicit drugs, controlled counterfeit substances, or alcohol, will be subject to the following:

First Offense:

a. Student and parent/guardian notification will occur pursuant to school district Policy and Procedure 3200. The incident will be reported to the superintendent or designee, and when appropriate, a commissioned law enforcement officer.

b. Student will be subject to a two (2)-day, short-term suspension.

(1) Agreement to complete a four-session educational intervention program or a mutually agreed upon alternative within an immediate four (4)-week period. Parent/guardian participation is highly recommended.

(2) If the classes are not completed within thirty (30) calendar school days, there may be an additional five (5)-day, short-term suspension added to the disciplinary action.

Second Offense within Twenty-four (24) Months of the First Offense:

a. Student and parent/guardian notification will occur pursuant to school district Policy and Procedure 3200. A commissioned law enforcement officer will be notified.

b. A second offense will result in a long-term suspension. A report will be filed with Student Support Services. According to Procedure 3200, students are allowed to apply for re-admittance to a Spokane District school during the long-term suspension. An assessment must be completed by the student or the student's parent(s)/guardian(s) at their expense. If the students is to be

readmitted, a plan will be developed and documented that incorporates the recommendation of the assessment and the needs of the student, family, and school. Remaining in school is contingent upon full compliance with the terms of the Readmission Plan.

Third Offense: Within twenty-four (24) months of the first offense

a. Expulsion

2. Sale of Drugs/Alcohol

Disciplinary Procedures

Students who violate Policy 3200 by selling, offering to sell, or arranging to sell illicit drugs, controlled or counterfeit substances, prescription drugs, inhalants, or alcohol will be expelled and reported to a commissioned law enforcement officer.

3. Distribution of Drugs/Alcohol

Disciplinary Procedures

Students who violate Policy 3200 by distributing, offering to distribute, or arranging to distribute illicit drugs, controlled or counterfeit substances, prescription drugs, inhalants, or alcohol will be subject to any or all of the disciplinary actions in this procedure including expulsion.

4. Possession of Drug Paraphernalia

Disciplinary Procedures

Possession of paraphernalia (as defined in RCW 69.50.102) will result in:

First Offense:

a. Parent conference and when appropriate, a report filed with a commissioned law enforcement officer.

b. Short-term suspension.

Second Offense:

a. Parent conference and report to a District commissioned law enforcement officer.

b. Long-term suspension.

B. Student Violations of Tobacco Products:

1. Use and/or possession of tobacco products by students is prohibited in or on all school property, school sponsored events, school buses, and property adjacent to all school campuses. Tobacco use and/or possession are considered a

disruption to the school-learning environment and any student, who allegedly violates the District tobacco policy, must receive appropriate progressive discipline/intervention action.

2. Once a written referral has been issued, the following procedural steps should be followed:

   a. First violation: The parent(s)/guardian(s) will be notified about the student's use and/or possession of tobacco products. A decision shall be made regarding appropriate referral for either a tobacco education or tobacco cessation program.

   b. Second violation: After an informal screening, one or more of the following options will be chosen: repeat the District education or cessation program, a one (1)-day in or out-of- school suspension, or up to four(4) hours of community service. A parent/guardian conference about the student's continued use and/or possession of tobacco will be scheduled within a two (2)-week period. Other interventions may be utilized based upon mutual agreement between the administration and the parent(s)/guardian(s).

   c. Third or more violations: After an informal screening, one or more of the following options will be chosen: repeat the District education or cessation program, a two(2)-day in or out-of-school suspension, or up to ten (10) hours of community service. A parent/guardian conference about the student's continued use and/or possession of tobacco will be scheduled within a two (2)-week period. Other interventions may be utilized based upon mutual agreement between the administration and the parent(s)/guardian(s).

3. All students will be notified each year of school policy prohibiting the use/and/or possession of tobacco products. Posted signs prohibiting the use and/or possession of tobacco products at all major entrances of school buildings and/or buildings used by the school district.

4. School Resource Officer or District Security Officer Tobacco Referral Process:

   a. If the School Resource Officer or District Security Officer observes a student using and/or in the possession of tobacco products, the officer may issue a Minor in Possession of Tobacco Referral. A copy of the referral will then be forwarded to a designated school official and the procedure for tobacco use and/or possession should be followed.

   b. Students of sixteen (16) and seventeen (17) years of age, who decline or fail to participate in a tobacco program may be issued a civil infraction. If the student is under the age of sixteen (16), the officer may refer the student to the juvenile prosecutor for disposition.

   c. Upon completion of a District tobacco education or cessation program, a notice will be forwarded to school administration and the security department. In accordance with this procedure, the security department will maintain referral and program completion records for the students issued a Minor in Possession of Tobacco Referral.

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	✔

IV. Secondary Activities Code: Rules and Regulations

A. School programs should reflect the attitudes of the community which support them. If the community is to truly identify with its schools through the activities program, it is imperative that team members dress and behave in a manner that will inspire pride and approval by the community. If appropriate benefits are to be derived from the activities program, it must be able to operate in a climate devoid of disruptive influence.

Activity Season--The rules and regulations apply to each student who participates during the defined activity season which begins with the first practice and concludes with the awards presentation or activity turning out for another sport, whichever comes first. Participants are required to adhere to rules which are defined in the activities contract.

B. Alcohol, Drugs, Tobacco, Vulgarity, Stealing, And Misconduct:

1 A participant shall not use, consume, possess, transmit, or sell alcoholic beverages, drugs, narcotics, or tobacco.

2. A participant shall not use obscene or vulgar language or behavior.

3. A participant shall not steal. A participant shall not use another's property without permission. Stealing or unauthorized use of others' property will not be tolerated.

4. A participant shall not engage in conduct detrimental to the squad or to the school.

5. Participants shall also comply with all other rules of conduct contained in District Policy and Procedure.

C. Practice, Contests, and Performances:

1. A participant is expected to attend all scheduled practices, team meetings, contests, and performances whether school is in session or not. If a participant finds it necessary to miss a practice or a meeting, prior arrangements must be made with the coach or advisor.

2. A participant shall not quit one activity and be eligible for another activity in the same season without the consent of both coaches/advisors and the principal/designee.

D. Equipment:

1. School-owned equipment which is checked out by a participant in any activity is his/her responsibility. The loss or misuse of this equipment will be the financial obligation of a participant. A participant will not be allowed to continue competition or to receive awards until any obligations due to the loss or misuse of equipment are met.

2. School-owned equipment shall be utilized for team or group practice for scheduled contests and performances. Exceptions must be approved by the principal/designees.

E. Travel: When transportation is provided by the school district, a participant is expected to travel to and from contests or performances in the vehicle provided. Exceptions will be granted consistent with the procedures established pursuant to Policy 8311.

F. Nonschool Participation: A participant in any activity shall not compete in any school uniform at nonschool activities unless approved by the principal/designee.

G. Home-school participants shall file a Declaration of Intention to Home-school form prior to being allowed to participate in extracurricular or co-curricular activities.

H. Procedures Prior To Removal: If a student is to be removed from an extracurricular activity covered by the Secondary Activities Code the teacher/coach imposing such discipline and the principal/designee shall review informally the proposed discipline prior to its imposition. Rights and procedures for discipline and short-term suspension under this policy will apply to any appeal or removal. (See Section I.E.)

Legal References:
RCW 28A.27
RCW 28A.58.1011
RCW 28A.58.125
RCW 28A.58.201
RCW 28a.300.285 - Harassment, Intimidation or Bullying
RCW 28A.320
RCW 28A.600.480 - Harassment, Intimidation or Bullying
RCW 281.600
WAC 180-40

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