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GLENN COUNTY BOARD OF EDUCATION

Gary Tudesko, an individual, Appellant, vs. Willows Unified School District, Respondents.	**BRIEF IN SUPPORT OF APPEAL TO GLENN COUNTY BOARD OF EDUCATION FROM WILLOWS UNIFIED SCHOOL DISTRICT EXPULSION ORDER; REQUEST FOR REVIEW DE NOVO** Expulsion Hearing: November 19, 2009 Order of Expulsion: November 20, 2009 Appeal Hearing Date: January 15, 2010 Time: 10 a.m.

TO GLENN COUNTY BOARD OF EDUCATION AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT per California Education Code section 48919, pupil Gary Tudesko has appealed from an Order of the Governing Board of the Willows Unified School District of Glenn County, dated November 20, 2009, expelling him from the public schools of the school district, and more particularly, Willows High School. The Appeal has been set for public hearing before the Glenn County Board of Education in accordance with the provisions of sections 48918, 48919, and 48920 of the Education Code.

Under Education Code section 48923, Appellant also hereby moves for and requests review *de novo* so that he may submit for the County Board's consideration new evidence not presented at the original hearing. Such information is relevant, material evidence that with due diligence could not be produced at the original hearing, was improperly excluded, and/or is

evidence significant to the Board's jurisdictional issues.

Per California Education Code section 48919, the Expulsion Order by the Willows School District Governing Board is appealable.

Dated: January 4, 2010

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I. INTRODUCTION AND SUMMARY

This Appeal concerns the expulsion of Willows High School ("Willows High") student Gary Tudesko ("Gary"). The Willows Unified School District's Governing Board ("School District") expelled Gary for possessing firearms on school grounds. The central error, and the reason this Board of Education must reverse the School District's decision, is that Gary never "possessed" firearms on "school grounds" at all.

Rather, Gary went duck hunting early one morning before school. He legally parked his truck (with his unloaded shotguns inside) on a public street neighboring the school but *off* school grounds with adjacent private residences, locked the truck, then walked onto campus to attend class. He parked off-campus, rather than in a school parking lot, to avoid violating the school's policy against having firearms on school property.

Unfortunately, a third-party security firm ("Interquest"), acting as an agent for the school while trying to drum up more district business, decided to have its dogs smell cars parked on public streets near the school. One of the dogs "alerted" on Gary's truck. The security firm contacted Principal Geivett, who in turn contacted the police, who traced the registered truck to Gary. Gary was pulled out of class and was directed to unlock his truck, where the unloaded shotguns in the back of the cab had been securely placed.

This Appeal from the School District's Expulsion Order concerns Gary right to a fair hearing, to due process, to be free of unreasonable search and seizure, to protect his Second Amendment right to lawfully keep and bear arms, and to an education. As this Board surely understands, expelling Gary from all district schools and banning him from all school activities – in effect isolating him from his school community for an entire year – is a drastic measure. The expulsion will leave permanent psychological scars, and creates a record that will follow Gary for the rest of his life. The Order will deprive Gary of the quality education and experiences he otherwise would receive at Willows High School, which in turn will limit his college options, his job opportunities, and his opportunities in life, generally. When admissions personnel and prospective employers find that Gary was expelled for "carrying guns on campus," the first impression likely will be that he is a dangerous individual – perhaps a gang member or a deranged

and violent person. Gary will then have to overcome that first impression and explain that he was not on campus and that he is a duck hunter, not a gang member - that is, assuming he is even afforded the opportunity to correct the false first impression at all. In most cases, he likely will not be given that chance.

Gary should not be in this predicament. Gary's rights; to an education, to due process, to keep and bear arms, to be free from unreasonable searches and seizures, and others, have been violated in multiple respects by a few misguided and misinformed school administrators who, among other mistakes, wrongly instructed the School District that it *must* expel Gary from school because he had "possessed" firearms on "school property." Since no firearms were possessed on school property, that was legally and factually incorrect. To make matters worse, those administrators, in particular Willows High Principal Mort Geivett ("Geivett"), repeatedly instructed the School District at the Expulsion Hearing ("Hearing") that, based on their version of the law and "facts," the School District had no choice or discretion; it was *required by law* to expel Gary. That, too, was incorrect as a matter of law.

According to Geivett a public street adjacent to school property somehow *is* school property, and the expulsion is warranted because carrying a gun *on school property* is an act so grave that an immediate suspension and subsequent expulsion for an entire year was mandatory, and required by the School District's "zero tolerance" policy.

The School District's "zero tolerance" policy, however, for possessing guns *on school property* should never have been applied in this case – because Gary *never possessed guns at school or on school property*. Simply put, this sad situation is the result of misinformation that, in turn, is the result of a misunderstandings and misapplications of key terms in the California Education Code provisions banning guns on campus. As shown below, California law is clear and unambiguous on the definition of certain key related terms such as "possession," "school grounds," or "school property." The public street where Gary's truck was parked is *not* "school property" nor "school grounds."

Possessing a firearm *on school property* means what most people would assume it means. It means carrying a gun *at* school, on property owned or leased by the school, whether brandishing

a gun openly or carrying it concealed, e.g., in your pocket, jacket, or purse, or having a gun in one's locker at school, because the gun necessarily would have been in one's immediate possession and under their direct control *on school property*. What it does *not* mean, however, is "possessing" a shotgun while duck hunting early in the morning and then leaving the unloaded shotgun in your *locked* vehicle legally parked on a public street *off school property* is a violation of the Education Code or cause to ban a student from their fundamental right to an education.

Specific legal issues aside, Gary is in this position because of a short-sighted bureaucratic approach to enforcing the school's "zero tolerance" policy toward firearms. There are valid reasons for having harsh policies on responding to egregious acts at school. We all want to keep students safe. And it is reasonable to suspend and ultimately expel a student who attacks another with a knife, or lingers behind the gym selling life-threatening drugs, or sexually assaults another student, or carries a gun to hurt other students. These are the types of acts which should lead to mandatory recommendation of expulsion under the Education Code, and under a zero-tolerance policy. But expanding the scope of that policy to expel a young man in a rural community who gets up before dawn to go duck hunting and afterwards leaves his unloaded shotguns locked in his off campus truck is absurd.[1]

Time and again policies like these result in a triumph of irrational political correctness over logic, common sense, and justice. Given that Gary had gone duck hunting that same morning with friends (hence the two shotguns), had bird-shot loads for ammunition, had intentionally parked off-campus to avoid any issues, and had several friends corroborate his story, Willows High administrators should have acknowledged that the factual circumstances *alone* did not warrant discipline, never mind *expulsion*.

In other words, this case is worse than the usual misapplication of a "zero-tolerance" policy. Usually there is a technical but innocent violation of the policy, e.g., the young boy who was expelled for bringing his new Boy Scout camping utensil to class because it included a spoon,

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[1] It is perfectly legal to transport an unloaded shotgun in a vehicle. (See, e.g., California Department of Justice website, describing legal means of transporting firearms, at http://ag.ca.gov/firearms/travel.php.) See also, Penal Code §§ 12025, 12026, 12031.

fork, and a small knife. But here, there was no violation at all. That is why this case has garnered national attention, with stories in newspapers across the country and TV interviews on Fox News, as yet another example of a "zero-tolerance" policy run amok.

But avoiding public ridicule and expensive, protracted litigation should not be the reason this Board should reverse the School District's expulsion order. The main reason, of course, is that Gary Tudesko did not deserve to be expelled because he did not break the law since he did not have his shotguns on "campus," nor on school "property" nor on school "grounds" at all.

That reality provides ample grounds for this Board to reverse the expulsion decision and return Gary to school. Accordingly, this Board need not delve into the details of every mistake and injustice, small and large, that Gary suffered at the hands of the school administrators processing this case. But make no mistake, beyond the misapplication of the Education Code to an act that was not a violation of any law or school policy, there were multiple violations of Gary's rights that warrant reversal of the School District's decision. These violations are explained, below, out of an abundance of caution and to preserve the legal issues for a subsequent appeal to the courts should this Board decide *not* to correct this obvious error.[2]

Based on the Constitutional Due Process, fundamental rights, and statutory interpretation issues presented by the expulsion, including the School Districts failure to consider the nonexistence of highly probative relevant evidence at the Hearing, this Board should exercise its discretion and review this Appeal de novo.

We respectfully ask that this Board promptly act to reverse the expulsion decision, now. Moreover, we ask this Board to direct the School District to expunge all records of this expulsion action. The Board is fully authorized to take such actions, as outlined below.

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[2] In addition to the typical violations, e.g., the denial of a due process and a fair hearing, abuse of discretion, and acts beyond Willow High's jurisdiction, the actions in this matter also raise constitutional issues. For example, Willow High's search of Gary's locked truck (off school property) that lead to confiscation of his shotgun arguably infringed Gary's right under the Fourth Amendment to the U.S. Constitution to be free from unreasonable searches and seizures. Further, Gary's shotgun is the type of "Arms" protected by the Second Amendment, and Gary's right to keep and bear Arms includes the right to do so for the purpose of hunting, as specifically noted in the landmark case of *District of Columbia v. Heller* (2008) 128 S. Ct. 2783).

II. COUNTY BOARD OF EDUCATION AUTHORITY AND SCOPE OF REVIEW

It is firmly established that a pupil does not lose his constitutional rights by virtue of his status as a pupil. (*Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503.) "Deprival of a student of a right to education is a solemn act, pregnant with painful consequences." (*Fielder v. Board of Education* (D. Neb. 1972) 346 F. Supp. 722, 729.) "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." (*Brown v. Board of Education of Topeka* (1954) 347 U.S. 483, 493.) The interest of society in providing an education to its children and the pupil's right to obtain such an education are "fundamental" interests. (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 608-609.) And although a school district has the authority to maintain discipline in the schools and to suspend or expel a pupil for misconduct or for refusal or failure to obey school rules, the district must exercise this authority in a manner that satisfies statutory and constitutional standards for disciplinary proceedings. (*Abella v. Riverside Unified Sch. Dist.* (1976) 65 Cal. App. 3d 153, 167.)

In light of this, this Board's review of the expulsion order in this case demands the utmost consideration.

A. This Board is Authorized to Reverse the School District's Decision and to Direct that All Expulsion Records be Expunged

Among the Glenn County Board of Education's ("Board") duties in reviewing the expulsion order is to "determine if the pupil's due process rights were violated in a manner which resulted in the pupil receiving an unfair hearing." (Glenn County Board of Education Expulsion Appeal Handbook ("GCBOE Handbook") at p. 8, **Exhibit A.**) Further, like appellate courts in the state civil court system, this Board acts as an appellate review body, and also must determine whether the expulsion decision was supported by substantial evidence and based on a correct understanding of applicable law. While this Board's review is generally limited to the record

made before the School District, it is not always so limited. Education Code[3] section 48923 outlines this Board's decisional options upon review, which includes authorization of review de novo.[4]

In this case, based on the existing record and applicable law, it is clear Principal Geivett wrongly instructed the School District regarding both the facts and the law and, unfortunately, the School District followed his instruction – apparently convinced it was compelled to do so because Geivett told them so. But Geivett's assertions were actually nothing more than his *opinion* about the facts and the law. And his opinion that Gary "possessed" a firearm "on school grounds" in violation of sections 48900(b) and 48915(c)(1) is simply wrong, because his understanding of

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[3] Unless otherwise noted, all further section references are to the California Education Code.

[4] Section 48923 provides:

> The decision of the county board shall be limited as follows:
> (a) If the county board finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board, it may do either of the following:
>
> (1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending the reconsideration.
>
> (2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.
>
> (b) If the county board determines that the decision of the governing board is not supported by the findings required to be made by Section 48915, but evidence supporting the required findings exists in the record of the proceedings, the county board shall remand the matter to the governing board for adoption of the required findings. This remand for the adoption and inclusion of the required findings shall not result in an additional hearing pursuant to Section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of Section 48918.
>
> (c) In all other cases, the county board shall enter an order either affirming or reversing the decision of the governing board. In any case in which the county board enters a decision reversing the local board, the county board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and the expulsion shall be deemed not to have occurred.

what "possess" and "school grounds" means is wrong. The plain language of the Education Code, case law precedent, Attorney General opinions interpreting that code, and last but not least common sense, dictate otherwise.

Thus, under section 48923(c), this Board is authorized to, and should, reverse the School District's decision and direct the School District to expunge all records regarding Gary's expulsion.[5]

B. This Board Has a Duty to Ensure Gary's Fundamental Right to an Education Was Not Taken From Him In Violation of His Equally Fundamental Rights to Due Process and a Fair Hearing

This Board's duty in reviewing the School District's drastic decision to expel Gary Tudesko includes, among other things, a review of the following questions, as posed in section 48922:

> (1) Whether the governing board acted without or in excess of its jurisdiction;
> (2) Whether there was a fair hearing before the governing board;
> (3) Whether there was a prejudicial abuse of discretion in the hearing; and
> (4) Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board.

In performing this review, this Board may consider: the expulsion record; the transcript and documents considered at the original expulsion hearing; issues raised by the parent in the appeal; issues apparent from the record itself; school district's arguments; and other issues it has authority under law to address. (See §48921; GCBOE Handbook at p. 8, **Exhibit A.**)

Significantly, in carrying out its charge to ensure that due process was afforded, this Board may further raise, and, (as will be more fully explained below, *must*) consider issues outside those

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[5] Significantly, the Notice of Expulsion Hearing ("Hearing Notice") refers *only* to alleged violations of sections 48900(b) and 48915(c)(1); the first reference to section 48915(b), which is evidently the School District's "fall-back" position, is in WUSD's Notice of Expulsion Hearing Order From Governing Board ("Expulsion Order"). (Compare the Hearing Notice at pages 1-3 of Exhibit B to the Expulsion Order, Exhibit C.) In the unlikely event that this Board believes the School District's belated reliance upon section 48915(b) as a basis for expulsion is somehow reasonable–even though Gary is innocent of the only alleged and properly noticed violations in this matter–then the Board is bound to rehear this case, or remand it for rehearing pursuant to section 48923(a).

presented by the record, such as the following:

- Has the additional finding been made that either the pupil has previously received lesser corrections which have not been effective, or the pupil presents a danger to the physical safety of others or him/herself because of the nature of the misconduct?
- If such findings have been made, has the school district described the evidence in the record which supports the finding?
- Was the misconduct proven by evidence which shows first-hand knowledge or which is not hearsay?[6]

(GCBOE Handbook at pp. 8-9, **Exhibit A**; See also §48915(b).)

C. Standards of Board of Education Review

Per sections 48918, 48922, and 48923, appeals to a County Board of Education are typically reviewed under the "substantial evidence" and "abuse of discretion" standards, outlined below. But since this Board is being asked to review Constitutional issues of Due Process, as well as the proper construction and meaning of applicable statutes, this Board is authorized to review the Expulsion Order *de novo*. (§ 48923(a)(2); See also 57 Ops.Cal.Atty.Gen. 439 (1974)).

1. Substantial Evidence

A decision of the School District to expel a student shall be supported by substantial evidence "relevant to the charges" showing that the pupil committed any of the acts enumerated in Education Code section 48900. (§ 48918 (f)(h).)

The gist of the "substantial evidence" rule is that when a *factual* determination is attacked on the ground that there is no substantial evidence to sustain it, the appellate court must determine whether, on the entire record, there is substantial evidence to support that determination. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) "Substantial evidence," however, is not synonymous with "any" evidence. (*People v. Bassett* (1968) 69 Cal.2d 122, 138-139.) The focus is on the *quality*, not the quantity, of the evidence; i.e., very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial." (*Toyota Motor Sales U.S.A., Inc. v. Super.Ct. (Lee)* (1990) 220 Cal.App.3d 864, 871-872 (emphasis added).)

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[6] These factors are particularly relevant to §48915(b)) that was *not* included in the Notice of Expulsion Hearing, but was nonetheless "found" after the expulsion Hearing and included as a basis for its expulsion in its Order.

Evidence must be reasonable, credible, and of solid value. (See *Kuhn v. Department of Gen. Servs.* (1994) 22 Cal.App.4th 1627, 1633.)

Here, of course, the "solid" evidence is that Gary parked his truck on a public street, not on school property; and he never carried or otherwise "possessed" a firearm on school grounds. Willows High failed to provide any evidence that Gary's actions violated the Education Code, other than the Principal's *opinion* about what constituted school grounds – which is decidedly "insubstantial evidence" – and that the violation required immediate suspension and mandatory expulsion.

2. Prejudicial Abuse of Discretion

Under section 48922, subsection (c), an abuse of discretion is established in any of the following situations:

(1) If school officials have not met the procedural requirements of this article.

(2) If the decision to expel a pupil is not supported by the findings prescribed by Section 48915.

(3) If the findings are not supported by the evidence.

Discretion is "abused" when, in exercising its discretion, the trial court (or in this case, the School District) "exceeds the bounds of reason, all of the circumstances before it being considered." (*Denham v. Super.Ct. (Marsh & Kidder)* (1970) 2 Cal.3d 557, 566.) The abuse of discretion standard is further based on the assumption that the trial court actually exercised the discretion vested in it by law. If the record demonstrates otherwise (e.g., that the School District erroneously believed it had no discretion in the matter because of false instructions of fact and law by Principal Geivett), the appellate court will (and this Board should) reverse and remand for the required exercise of discretion. (*Fletcher v. Super.Ct. (Oakland Police Dept.)* (2002) 100 Cal.App.4th 386, 392.)

Moreover, "Failure to exercise a discretion conferred and compelled by law constitutes a denial of a fair hearing and a deprivation of fundamental procedural rights, and thus requires reversal." (*Marriage of Gray* (2007) 155 Cal.App.4th 504, 515, internal quotes and citations omitted (trial court's failure to exercise its discretion is "itself an abuse of discretion"); see also

Gardner v. Super. Ct. (Statt) (1986) 182 Cal.App.3d 335.)

Here, it appears the School District actually may not have had any discretion to expel Gary at all because the facts clearly show that he did not violate the Education Code prohibition against possessing firearms on school property. Simply put, the "finding" that Gary possessed firearms on school property was not supported by substantial – or in fact any – "evidence." And the decision to expel Gary was not supported by the faulty findings. Consequently, the District abused its discretion in all respects.

3. This Board May Review the Case "De Novo" – Without Deference to the School District's or Principal Geivett's Legal "Findings"

> The county board of education shall determine the appeal from a pupil expulsion upon the record of the hearing before the School District, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the proceedings of the school board may be heard unless a *de novo* proceeding is granted as provided in Section 48923.

(Education Code § 48921).

Section 48923(a)(2) allows a hearing *de novo* "upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919."

> [T]he legislature has clarified the type of [de novo] proceeding it intended to be conducted by the County Board, i.e., evidence may be introduced. No limitation has been placed on the type of evidence, as is the case with review by the Superior Court of final administrative action. (Code of Civil Procedure § 1094.5(d).) Thus, we conclude that the hearing, although denominated as an 'appeal' is to be a *de novo* hearing."

(57 Ops.Cal.Atty.Gen 439) (1974).

Constitutional issues (due process or equal protection challenges, etc.) are also reviewed *de novo*. (*Herbst v. Swan* (2002) 102 Cal.App.4th 813, 816; *State of Ohio v. Barron* (1997) 52 Cal.App.4th 62, 67.) Likewise, the proper interpretation of constitutional provisions (as with statutes, below) is a question of law reviewed *de novo*. (*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth.* (2008) 44 Cal.4th 431, 448-449; *Redevelopment Agency of City of Long Beach v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74.)

Appellate courts (and this Board of Education, acting as an appellate body) may

independently determine the proper interpretation of a statute. This Board is not bound by evidence on the question presented in the trial court or by the trial court's interpretation (or the School District's). (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432; *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125; see also *Woo v. Super.Ct. (Carey)* (2000) 83 Cal.App.4th 967, 974 (city charter).)

Whether or not this Board determines that a full rehearing (before this Board or on remand) is warranted – and we believe the record is sufficiently clear that reversal is required with or without a full rehearing – this Board nonetheless reviews questions of law, statutory interpretation, and constitutional issues, et al., "*de novo.*" That is, this Board decides such issues on its own and need not afford any weight whatsoever to the School District's decision on such matters, especially considering they were founded upon Principal Geivett's unfounded opinions and incorrect instructions, rather than the law as written.

So, in a nutshell, the Board is free to make its own finding that the public street where Gary parked his truck is not school "property" or "grounds" and, based on that finding, further find that Gary did not violate the Education Code sections prohibiting students from possessing firearms at school.

III. STUDENT'S PERSONAL BACKGROUND

Gary Leland Tudesko ("Gary") was born January 6, 1993. He was born into a house full of children.[7] His three older siblings and two older cousins took to calling him 'King Gary' early and it no doubt contributed to his confident and very social nature. Gary grew up being everyone's favorite. Although nine years younger than his oldest sister, Audrey, they developed an exceptionally strong bond. Audrey was the main reason Gary took an interest in horses. Gary isn't much of an equestrian today, but for a three year period of time he rode and competed

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[7] His siblings are Audrey Fisher (Hughey), 26, who graduated from St. Mary's College w/ BS Biochemistry. She is married to a teacher and lives in Walnut Creek. Gregory Hughey, 24, an apprentice Carpenter's Union primarily doing bridge work. He lives with his grandmother on her ranch and helps with the horses 80 acres property; and Virginia Hughey, 23, who works in Minot, N.D.

successfully in many shows. The crowning moment was winning his class at the 2002 California 4-H Classic. Riders must win at a qualifying show to compete and the Classic draws riders from the entire state. His interest in horses waned about this time as he had discovered hunting.

Gary moved to Arbuckle in 2001 when he was eight years old, and met Jim and Agafia Thomas. Jim had just retired from the Coast Guard and had moved the family to the area. Jim and Agafia have four boys and the family eats, breathes, and lives to hunt. The road to Gary's house passed by the Richmond Hunting Club. That's where the Thomas family came to hunt waterfowl. Gary and their youngest son Josh became great friends, and Gary was simply 'absorbed' into their daily hunting routine. The year Gary turned ten he was invited to take his Hunters Safety Test, which was being sponsored by the club. He passed and has been an avid hunter ever since.

Gary played Little League during 4th and 5th grade. When he moved to Willows in 2003, Gary took up wrestling. He wrestled his 5th grade and 6th grade years. Gary's friends played football, so he decided to join the local team and played his 7th grade year. During this four year period of time, Gary was hunting at every opportunity. He chose not to participate in team sports after he finished football, as it got in the way of hunting.

During 8th grade he regularly helped Steve Piluso, Adaptive Physical Education, work with disabled students. He also participated as a costumed character in the 'Fruits and Veggies' play produced by teacher Mike Buckley and presented district wide. His 8th grade year was the only year he did not participate in a structured extra-curricular school activity, but he did race his bike at the Chico BMX Track. Gary was one of only half a dozen students to work on fund raising efforts to raise enough money for the 8th grade class to go to Six Flags in Vallejo.

Gary's willingness to step up and participate runs in the family. Gary's grandmother, Sally Barron, is a well known figure in open field coursing. Open field coursing is the pitting of sight hounds against jack rabbits in an ultimate test of speed and agility. Sally is past president and an active member of the National Open Field Coursing Association, or NOFCA. Gary has been hunting (the dog owner must obtain a valid Hunters License) with his grandmother since he was big enough to hold onto a leash. In 2005, at the age of 12, Gary traveled to Wyoming with

dogs that came from all over the United States and Canada.

Recently, Gary's grandmother worked to defeat AB 2110 and AB 1634, legislative issues of concern to all hunters. Gary and his buddy Josh Hurlburt helped in collecting signatures and raising awareness in hunting-based organizations. Through Gary's involvement with his grandmother, he has met many people from all walks of life who found him to be a responsible and socially adept young man.

Gary's work history is solid for a young man not yet seventeen. Over the past three years he has worked summers for his father running various pieces of heavy equipment for his father's composting business. Gary ran bankout during last year's rice harvest and has both disced and chiseled in preparation for planting. He's worked at various times as shop help whenever needed. The jobs he's performed require a willingness to follow directions and the ability to complete a given task with minimal supervision. He has been both dependable and level headed.

High school has proven somewhat of a challenge. Gary's freshman year was uneventful, he joined the Future Farmers of America club and sold a market hog at the County Fair. The first semester of his Sophomore year was productive, but when he turned sixteen, his father gave him with a truck. Young men and their trucks. Gary's grades dropped, but he maintained the required GPA to again sell his market hog at the County Fair.

Gary also 'earned' the opportunity to attend summer school to make up credits in English and History. Gary excels in the shop classes, consistently earning top grades. Even though Gary struggles in math, he passed his CAHSEE in both math and English his Sophomore year.

A. Schools Attended

1998	pre school (3 months)		Elk Grove
1998/1999	K grade		Doyle
1999/2000	1st grade		Lassen View, Dairyville
2000/2001	2nd grade		Lassen View
2001/2002	3rd grade	Mr. Hawk	Arbuckle Elementary, Arbuckle
2002/2003	4th grade	Mr. Griffith	Arbuckle Elementary
2003/2004	5th grade	Mrs. Lackey	WIS (Willows Intermediate School),

			Willows
2004/2005	6th grade	Mr. Tate	WIS
2005/2006	7th grade	Multiple	WIS
2006/2007	8th grade	Multiple	WIS/Opportunity
2007/2008	Freshman	Multiple	Willows High
2008/2009	Sophomore	Multiple	Willows High
2009/	Junior	Multiple	Willows High

B. Sports History

2003	Little League in Arbuckle
2004	Wrestling at WIS
	Little League
2005	Wrestling at WIS
2006	Football, Jr. Midgets, Willows
2007	BMX Racing in Chico

C. Other Activities

2002	4-H	Horse Project, Classic Show
2005	Coursing	Borzoi Fall Cup in Wyoming
2008	FFA	Sold market hog
2009	FFA	Sold market hog
		Sold Duck Blind - metal project
2009	Derby	Ran car in 2nd Annual Colusa Firearm's Association Destruction Derby

IV. THE SCHOOL DISTRICT'S EXPULSION ORDER SHOULD BE REVERSED

According to the School District's "Notice of Expulsion Hearing Order" Gary was expelled for violating two specific Education Code sections. He allegedly "possessed" firearms "at school" in violation of sections 48900(b) and 48915(c)(1). Significantly, those are the only two code sections he was alleged to have violated, per the Notice of Expulsion Hearing provided to Gary and his parents.

But the Expulsion Order, dated November 20, 2009, also included a finding that section 48915(b) had been proven too - allegedly because of the "multiple infractions and violations of the school code of conduct" for which "other means of correction are not feasible or have repeatedly failed to bring about proper conduct." ("Expulsion Order", **Exhibit C**.)

Turning first to the code violations regarding firearm possession at school, i.e., the charges Gary had notice of, section 48900(b) states that:

> A pupil *may not* be suspended from school or recommended for expulsion *unless* the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:
>
> (b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.(§48900(b) (emphasis added).)

Section 48900 further provides:

> A pupil may not be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section [i.e., including 48900(b)] and related to school activity or attendance that occur at any time, including, but not limited to, any of the following: (1) While on school grounds. (2) While going to or coming from school. (3) During the lunch period whether on or off the campus. (4) During, or while going to or coming from, a school sponsored activity.

(Education Code §48900(s).)

Section 48915(c)(1) provides:

> (c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts *at school* or *at a school activity off school grounds*:
>
> (1) Possessing, selling, or otherwise furnishing a firearm. . . . This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.(§48915(c) (Emphasis added).)

The School District's Order must be reversed because, as a matter of both fact and law, Gary did not violate either of cited sections. Gary only "possessed" the shotguns while duck hunting with his friend before school, while transporting the unloaded shotguns from his home to the duck blind, and from duck hunting to the streets adjacent to his school. Gary did not

"possess" the shotguns "at school," or "on school grounds," because he parked off campus on a public street. So there is no evidence to support the School District's decision or the required "factual findings" underlying the School District's "determination" that Gary violated section 48900(b) or 48915(c)(1).

The School District's Order expelling Gary based on "findings" regarding section 48915(b) is even more problematic. First, there was no notice given that he had to be ready to defend himself with respect to section 48915(b). Second, Willows High never took "any means of correction" to stop Gary from parking his truck off campus with duck-hunting gear locked inside (assuming Willows High even has such authority) and, consequently, the notion that these non-existent attempts to correct that behavior have "repeatedly failed" is nonsensical. There were no such attempts. And there is no evidence that Gary ever was, or is now, a threat to anyone. So the School District's decision to expel Gary based on those additional unnoticed "grounds" also warrants reversal.

The specific legal grounds upon which this Board may base its reversal of the School District's erroneous decision were outlined in Part II, above. We will apply them to the specifics of this case below.

A. The Willows School Board Acted Without Authority and In Excess of Its Jurisdiction in Finding Violations of Education Code Sections 48900(b) and 48915(c)

"A pupil may not be expelled unless the offense is a violation of the California Education Code or school rules adopted under Education Code section 35291.5.[8]"

A proceeding is without or in excess of jurisdiction if it involves "a situation where an expulsion order is not based upon the acts enumerated in Section 48900, or a situation involving acts not related to school activity or attendance." (§48922(b)) The District had no jurisdiction because Gary did not "possess" the firearms at the time of the incident, nor did he possess firearms "on school grounds." The act of leaving unloaded shotguns and shells in one's locked vehicle, parked *off* school grounds, is not among the acts enumerated in section 48900 – neither

[8] GCBOE Handbook at p. 8, **Exhibit A.**

48900(b), nor 48915(c), nor any other provision therein.

1. Gary Tudesko Did Not "Possess" a Firearm Under Either 48900(b) or 48915(c)

"Possession" in the context of sections 48900(b) and 48915 (c) has been defined by the courts as the *immediate* control of an object; the thing possessed must be under the dominion of the possessor. (*People v. Bigelow*, (1951) 104 Cal.App.2d 380, 385, emphasis added.)

Moreover, the application of both sections 48900 and 48915 were considered in an Attorney General (AG) Opinion dated April 24, 1997 where the AG was specifically asked: Under what circumstances may a pupil be expelled from school for "possessing" a firearm? The Opinion concluded that: "A pupil may be expelled from school for "possessing" a firearm if the pupil knowingly and voluntarily *has direct control over the firearm.*" (80 Ops.Cal.Atty.Gen.91 (1997), Emphasis added.) A copy of the opinion is attached as **Exhibit D**.

That AG Opinion listed examples of "possession." If a pupil is handed a firearm by another pupil, brings it to a restroom, and abandons it, such acts constitute a violation of section 48900 or 48915, unless the sole purpose of the brief possession is to dispose of the firearm; if a pupil places a firearm in the backpack of another pupil, tells the other pupil of the firearm's location, and the other pupil returns the firearm an hour later wrapped in a coat, both pupils have sufficient "possession" to constitute a violation of section 48900 or 48915; no intention to dispose of the firearm could be asserted based upon such limited facts. It also constitutes a violation of either statute if the pupil accepts a firearm from another pupil, hides it under his coat for a short time, and then returns the firearm. As long as the possession is knowing and voluntary and not for the purpose of disposing of the firearm, e.g., handing the firearm to school officials, the pupil "possesses" the firearm regardless of the length of time involved.

In the above examples above, the possessor has direct and immediate control of the firearm. As such, the possessor is able to bring it to a restroom, place it in the backpack of another student, hide it under their coat, etc. – and all while *on school grounds*.

None of the factors of "possession" are present here. When Interquest Canine spotted the firearms, they were safely locked in Gary's truck, parked *off school grounds*. Gary was in class.

He did not have "direct control over the firearm." He did not "possess" the shotguns at school or on school grounds. In fact, the shotguns were never on school grounds in the first place.

It follows then that because Gary did not have "direct control over the firearm," Gary could not have been found to "possess" the firearm as that term is specifically interpreted by the Attorney General and by California case law. One simply cannot equate having an unloaded firearm stored in a locked vehicle on a public street with a student who carries a weapon to class in a coat, knapsack, or purse. The "testimony" to the contrary presented at the expulsion hearing was wrong as a matter of law – and extremely prejudicial.

2. No Firearm Was Possessed on "At School," "School Grounds," "At a School Activity," or "At School Activity Off School Grounds"

Even if it were found that Gary had "direct control over the firearm," the School District still erred in concluding that the supposed possession occurred "while on school grounds." Gary specifically parked off-campus that day. At the risk of belaboring the point, Gary and his shotguns were never together on "school grounds."[9]

Principal Geivett tries to circumvent this inconvenient fact by claiming "school grounds" means on or *near* school grounds, or even extends to 1000 feet from actual school property. In making the later arguments, Geivett invoked federal and state "Gun-Free School Zone" laws, and

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[9] Three cases considered and rejected attempts to extend the geographical property line boundaries of "school grounds" or "school campus." First, in *Walsh v. Dept. Alcoholic Bev. Control* (1963) 59 Cal. 2d 757, the California Supreme Court held that the "grounds belonging to the University of California, at Berkeley" were to be limited to the traditional "main" campus of that institution. The victorious defendants' in *Walsh* relied on two facts to support their argument: (1) the fact that the City of Berkeley retained title to and jurisdiction over the streets bisecting the four city blocks involved and (2) the fact that the university had not acquired ownership of certain lots within those blocks.

In *Vanoli v. Munro,* (1956) (147 Cal.App.2d 179), the court indicated that "campus" boundaries may not include "noncontiguous lands, nor lands obviously not connected with the university..." (*Walsh* at 764.)

Lastly, in *Matter of Petition of Burke,* (1911) 160 Cal. 300, the California Supreme Court considered the boundary of Leland Stanford Jr. University. It did so to construe the proper reach of Penal Code section 172a, prohibiting the sale of intoxicating liquor within one-half miles of the university grounds. The court carefully excluded application of section 172a to "...any outlying grounds or campuses...." (*Id.* at 306.)

conflated the Education and Penal Codes. At the Hearing, when finally pressed about the fact that Gary's truck was not on school property, Geivett says:

> A. [Geivett] Okay. You want me to clarify, I'll clarify it for you one more time.
> Q. Yes.
> A. Going to and from school, during lunchtime, if they're parked, as this -- this is what we're talking about -- if they're parked within a thousand feet of that campus, in a parking lot within a thousand feet, on the street within a thousand feet, I'll clarify for you -
> Q. Yes, please.
> A. I believe that that student is in violation of that, of the Ed Code and in violation of that gun free zone law.

(Expulsion Hearing Transcript ("Transcript") at 85, lines 13-25, **Exhibit E.**)

But Gary was not charged with or put on notice that he was charged with – nor does any authority suggest Principal Geivett is authorized to charge Gary with violating any state or federal gun free school zone laws. Moreover, by citing such Penal laws, the blatant logical flaws in Principal Geivett's attempt to prove an Education Code violation are exposed. State and federal definitions of "school zone" are necessarily predicated on there being some ascertainable point from which the 1000-foot zone extends. That point is the school's property line, i.e., where the school "grounds" end. Otherwise "school zone" would be undefinable and unconstitutionally vague: How can a zone be defined as 1000 feet from "on or near" some area?.

The state and federal definitions of "school zone" are almost identical, and make the point:

> Federal Definition (18 USCS § 921):
>
> (25) The term "school zone" means--
> (A) in, or on the grounds of, a public, parochial or private school; or
> (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.
>
> State Gun-Free School Zone, Definition (Cal. Penal Code § 626.9):
>
> e) As used in this section, the following definitions shall apply:
> (1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

Geivett attempts to circumvent this critical and undisputed fact by rewriting the Education Code to comport with his *opinion* about what the law should be. In Principal Geivett's opinion

"at school" or "on school grounds" actually means "on or *near* school property." (Transcript at 68-69, **Exhibit E.**) And further, because one has to stretch the law further to support Willow High's case, in Principal Geivett's *opinion*, "possession at school" includes keeping one's property in a locked vehicle parked on a public street, off-campus – not in a backpack or purse or even a locker in a school hallway as the Attorney General states (see above), but in a locked vehicle parked on a public street. Geivett's opinion does not overrule state law, or the Attorney General's opinion. And it does not provide a basis for expelling Gary Tudesko from school.

Nonetheless, during his testimony at the Expulsion Hearing, Principal Geivett repeatedly misled the School District by claiming he was compelled by state law, specifically 48915(c)(1), to immediately suspend Gary and recommend Gary's expulsion because Gary had possessed a firearm on school property. He also told the School District that it, too, was compelled to expel Gary. All based on Principal Geivett's erroneous *opinion* that the Legislature really didn't mean to limit its list of mandatory expulsion offenses to those occurring on school grounds (or at school activities off school grounds), but meant to say "on or near" school grounds. But there is nothing ambiguous about the Legislature's words; there is nothing ambiguous about school "property."[10] And a public street is not school property. Moreover, Principal Geivett does not have authority to search student's private, locked vehicles parked on public streets, nor to expel students for personal items lawfully stored in vehicles parked off-campus.

At the Hearing, Geivett misled the School District repeatedly about the provisions of the Education Code. It was not until he was pressed by Gary's mother – not a lawyer – that Geivett admitted that his assertion that neither he nor the School District had any discretion in the matter and were compelled to expel Gary was based solely on his *opinion* that "on school grounds"

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[10] The American Heritage Dictionary of the English Language, 4th edition (2009) defines property as follows: 1. Something owned, a possession; 2. Something tangible or intangible to which its owner has legal title; 3. Possessions considered as a group; 4. A characteristic trait or peculiarity, especially one serving to define or describe its possessor; 5. The right of ownership, title.

meant "on or near" school grounds.[11] When caught in his false statement of the law, Geivett explained his transgression by speaking of his duty to protect his students. He tried to justify his unlawful search and seizure, off-campus, of a student's private property, and his distortion of the law– substituting his opinion for state law–at the expulsion hearing, by claiming he it did it all to protect his students. Maybe so. But good intentions are no excuse to ignore the law.

In short, it is unlikely that Gary's duck-hunting related actions, including storing his unloaded shotgun in his locked vehicle on a public street, violated *any* code provisions – whether state or federal, Education or Penal. Willow High's attempt to expand the scope of the Education Code provisions that mandate expulsion for the most heinous acts by superimposing state and federal "Gun-Free Zone" provisions is apples and oranges. It only confuses the issue, mixing the Education and Penal Codes and state and federal statutes. It also highlights the absurdity of Geivett's argument, his incorrect instructions, and the School District's decision to expel Gary.

3. Gary Did Not Possess a Firearm on School Grounds "While Going to or Coming From School," That Is a Nonsensical Claim

When Interquest's dog "alerted" to Gary's truck during its illegal search of Gary's private property conducted off-campus, Gary was not "going to," or "coming from" school. He was already *in* school. He was in class. Further, as a matter of logic, the specific charge in this case – "possessing" a firearm "on school property" in violation of Education Code sections 48900(b) and 48915(c)(1) – could not have been committed while Gary was driving his truck on public streets, even if he was "going to," or "coming from" school. The undisputed fact is that the only time Gary "possessed" his shotgun was when he was duck hunting or transporting his unloaded shotgun in connection with duck hunting, both of which are perfectly legal activities that took

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[11] As an interesting side note, the Gun-Free School Zone Bulletin that Willows High slipped into its Hearing Package actually provides exceptions for firearms locked in vehicles – even on-campus! (See 20 U.S.C. § 7151, "Gun-Free Schools Act" ("Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property..."). Even the state law notes that its Gun-Free School Zone Act "does not prohibit or limit the otherwise lawful transportation of any other firearm [i.e., long guns, shotguns, etc.], other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law." (Cal. Penal Code § 626.9(c).)

place off school grounds. At no time, including while he was driving to school, did Gary possess any firearms on school property in violation of the Education Code. Not only did Willows High fail to present "substantial evidence" of the alleged violations, it failed to present *any* evidence – because there was none.

B. The District Erred in Failing to Find that "Other Means of Correction are not Feasible or have Repeatedly Failed to Bring About the Proper Conduct" or that "Due to the Nature of the Act, the Presence of the Pupil Causes a Continuing Danger to the Physical Safety of the Pupil or Others"

As mentioned above, Gary was never given notice that section 48915(b) would be used as a basis to expel him, so the Willow High's attempt to include it as one of the grounds for expulsion is a nonstarter, a clear violation of Education Code section 48918(b)(2)'s requirement that the student be notified of "specific facts and charges" ten days before the hearing. That procedural violation is addressed below. But even assuming it was a valid charge, Willows High still failed to produce the evidence required to support such "finding."

Under section 48915(b), if a School District finds that a pupil committed a section 48900(b) violation, it *may* expel the student, but only if the decision is based on a finding of one or both of the following:

> (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or
> (2) Due to the **nature of the act**, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

The obvious problem here is that the "act" in question is the *isolated incident of October 26th* – it happened once. The only corrective action taken to date was to immediately suspend and then expel Gary. No evidence of further similar incidents was introduced at the Hearing.

Section 48915(b) requirement is mandatory. That is, it directs that before the School District could lawfully expel Gary - for the charges cited - it would have had to show, and to find as a factual matter, that Willows High had tried unsuccessfully to correct the same behavior in the past, or that by virtue of Gary having unloaded firearms in his locked truck, parked off-campus, that allowing his presence at school causes a *continuing* danger to the physical safety of himself or others. But neither of these mandates was followed, let alone raised or reflected at the hearing. In

fact, no finding could have been made that other means of correction had ever been employed and failed, because Gary had never been cited for possessing a firearm before. Willow High's submission of the disciplinary/referral record, (presumably an attempt to show that other corrective means had failed) was irrelevant to the specific nature of the offenses Gary was noticed and charged with. None of the referrals or detentions had anything to do with the possession of firearms.

Nor did Willows High show that keeping Gary in school posed a "continuing danger" to himself or others. Gary did not actually bring the firearm onto school grounds. He did not have it in his direct and immediate control. He has never brought a firearm to school in the past (nor did he on this occasion). And if simply asked, he would have made sure to leave it at home rather than leave it in his truck, even though leaving it unloaded in his locked truck was not illegal. Moreover, the fact that the Principal released Gary without chaperoned supervision, and never made a phone call to confirm that he arrived home safely, along with the absence of any police charges against Gary, indicate that he was not considered a danger to anyone, even on the day of the incident.

Further, the absence of any referrals for intervention or counseling on the referral forms produced at the hearing over the 2 and a ½ year period covered similarly indicates that no one at Willows High considered Gary a danger to himself or others. There was simply no evidence presented at the Hearing to support any such "finding."

In sum, the School District expelled Gary for acts not covered by the Education Code. In doing so, it exceeded its jurisdiction and acted without authority, and violated Education Code section 48922(b). As discussed above in Part II, under such circumstances, this Board must reverse the Expulsion Order; the District's actions are void for lack of jurisdiction.

C. The District Failed to Introduce Substantial Evidence to Support Any of the Education Code Violations Charged

A decision of the School District to expel a student shall be supported by substantial evidence "relevant to the charges" showing that the pupil committed any of the acts enumerated in Education Code section 48900. (§ 48918(f)(h).) As noted in Part II, this Board must reverse the

School District's expulsion decision if it lacks substantial evidentiary support for the charges noticed.

1. Documents Relied Upon at the Hearing Were Irrelevant or Prejudicial

While the lack of evidentiary support is evident in the preceding discussion on lack of jurisdiction, we will review the documents submitted to the School District by the Willows High administrators, along with a few excerpts from the hearing transcript to more directly address the utter failure of the School District to support its findings with "substantial evidence," evidence that is "reasonable, credible, and of solid value." (See *Kuhn v. Department of Gen. Servs.* (1994) 22 Cal.App.4th 1627, 1633.)

In support of expulsion, principal Geivett introduced 57 pages of documents (the "Hearing Packet").[12]

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[12] The Hearing Packet is attached as **Exhibit H**, and contains 20 documents, including:
1. Notice of Expulsion, dated November 6, 2009 along with single-page from Student Handbook, (4 pgs)(Hearing Packet p.1-4 of 57)
2. Expulsion Referral from Willows Unified School District for Education Code section 48900(b), (1 pg)(Hearing Packet p.5 of 57)
3. Suspension Correspondence for 5 days, dated October 26, 2009, (1 pg)(Hearing Packet p.6 of 57);
4. Correspondence to Dr. Olmos from Principal Geivett re "Recommendation for Expulsion, (1 pg)(Hearing Packet p.7 of 57)
5. Willows High School Student Data Printout (General identity and contact information, GPA, Class Schedule) (2 pgs)(Hearing Packet p.8-9 of 57)
6. 2009-2010 Student Grade Report, (1 pg) (Credits, GPA)(Hearing Packet p. 10 of 57)
7. 2007-2009 Student Progress Transcript, (1 pg)(Hearing Packet p.11 of 57) (Courses, grades, credits earned)
8. 2009-2010 Class Schedule, (1 pg)(Hearing Packet p.12 of 57)
9. 2009-2010 Attendance Record, (1 pg) (Hearing Packet p.13 of 57)
10. Interquest Detection Canines, Incidental Maintenance Report by Agent T. Bogue, (1 pg)(Hearing Packet p. 14 of 57)
11. Willows Police Department Record of Property Taken for Safekeeping by Officer T. Alves, (4 pgs); (Hearing Packet p. 15-18 of 57)
12. Student Assertive Discipline Record showing 2 suspensions during Fall 2009, for a total of 6 days, (5 pgs)(Hearing Packet p. 19-23 of 57)
13. Suspension correspondence, dated October 23, 2009 for 1 day under 48900(k) for parking his car across the sidewalk and into the oleander bushes near the tennis courts.(1 pg)(Hearing Packet p.24 of 57)
14. Suspension correspondence, dated March 12, 2009 for Language/Profanity and Hate

2. The Referrals Were Minor and From Only a Few Teachers, None of Whom Were Witnesses at the Expulsion Hearing

Except for incident in question, none of the referrals submitted in the Hearing Package relate to the specific charges levied against Gary.

Of the 57 pages of purportedly "relevant" material submitted in support of expelling Gary for alleged firearm possession, over 30 pages referenced the discipline records, and many of those pages were simply duplicate administrative documents referencing the same low-level "classroom disruption" infractions (talking in class, having cell phone, etc.). Fully 24 of those documents were detention referrals spanning a 2½-year period. Gary has only been referred to detention *once* in the current school year. And although every form gives teachers the opportunity, nowhere on any of the referrals is there a request for intervention on behalf of the staff or student. Not for behavior, not for academics, not for counseling or anger management, not even for an alleged "hate statement." In fact, a majority of the referrals were from 2007 when Gary was in the 9th grade for talking in class, not having a textbook, or for having his cell phone in class.[13]

Beyond the lack or relevancy, the complaints come from the same seven (7) teachers, with 80% coming from the same four (4) teachers. None of those teachers were present at the hearing, nor is there any indication Willows High attempted to bring them to the Hearing. Instead, Geivett simply read line by line into the record referrals from other teachers without clarifying that he had

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Statement, for 4 days (1 pg)(Hearing Packet p. 25 of 57)
15. Notice of Suspension re March 12, 2009 suspension (1 pg) citing 48900(I) and 48900(s) (Hearing Packet p. 33 of 57)
16. Student Referral Forms (24 pgs),(Hearing Packet p. 26, 28-31, 33-51 of 57)
17. Stud ent Handbook, pg 13 re Dress Standards, Electronic Signaling Devices, Explosive Devices, and False Alarms. (1 pg)(Hearing Packet p. 52 of 57)
18. Gun-Free School Zone Notice, dated October 2006 (2 pgs)(Hearing Packet p. 53, 54 of 57)
19. Administrator Recommendation of Expulsion Matrix (2 pgs)(Hearing Packet p. 55-56 of 57)
20. Email correspondence with Ms. Parisio requesting Expulsion hearing be public, dated October 29, 2009 (1 pg)(Hearing Packet p. 57 of 57)

[13] Of the more "serious" infractions, there was one Saturday School in 9th grade, and one in 10th. And with respect to the 3 suspensions upon which Willows High belatedly attempts to buttress its expulsion recommendation.

no personal knowledge of the facts and circumstances giving rise to those referrals about which the Board allowed him to testify. This fact is therefore *not* obvious in the resulting transcript.[14]

Reliance by the School District in a school expulsion hearing on statements and reports rather than on testimony by witnesses is improper when the evidence is conflicting and there is no

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[14] The breakdown of Gary's teachers, classes, and referrals is as follows:

Gary's High School Teachers:	**18**	
Mr. DiGrande	Math	
Mr. Steinhoff	Woodworking	
Ms. Samons	Ag Science	
Mr. Bell	Welding	
Mr. Korling	English	
Mr. Zuckerman	PE/Geography	
Chief Spears	Administration of Justice	
Mr. Garrett	Woodworking	
Mr. Owen	English	
Mrs. Potts	Career Ed	
Mrs. Conklin	Math	
Mr. Lewis	English	
Mr. Holly	Keyboarding/Career Ed	
Mr. Prinz	History/Drivers Ed	
Ms. Albert	English	
Mr. Xanthus	Welding	
Ms. Lungren	PE	
Mr. Hanson	Auto Shop	
Teachers giving referrals:	**7**	
Mr. Korling	5	20%
Ms. Samons	7	28% (2 years w/Gary)
Ms. Lungren	4	16%
Mrs. Conklin	4	16%
Ms. Albert	2	8%
Mr. Lewis	2	8%
Mr. Holly	1	4%

Notably, nowhere on any Student Referral Form is there a request for intervention. Not for behavior, not for academics, not for counseling or anger management, not even for an alleged "hate statement." And there is nothing to suggest Gary posed a danger to himself or others. For purposes of this Board's review, perhaps the most notable fact above (and one verified by the record produced by the district) is that no intervention, plan, meetings, or outreach was ever conducted or even recommended for Gary by Willows High School. In fact, the current Willows Resource Officer has known Gary since the 5th grade, and has never intervened, or offered any type of counseling to Gary regarding his school challenges. Testimony of Officer Alves, Transcript at 30, line 20-21; at 31 lines 3-4.)

showing that the witnesses were unavailable or that the disclosure of their identity and presence would subject them to a significant and specific risk of harm. (*John A. v. San Bernardino City Unified Sch. Dist.*, (1982) 33 Cal.3d 301, 308.)

The School District's reliance on the discipline record as evidence to support his expulsion was an abuse of discretion. It was prejudicial because proper notice of section 48915(b) may have alerted Gary to ask that his teachers be present at the hearing, or that the circumstances of each instance of discipline in his record be re-examined and explained. Or he may have known that he needed to defend the wisdom and legitimacy of allowing him to continue attending school; that keeping him at school does not present a safety risk; that the single isolated incident of having unloaded guns in a locked truck parked off-campus is not the type of act that gives rise to the harsh conclusion that Gary should not be at school. He would have raised the fact that he does not have or exhibit any history of violent behaviors to suggest he is too dangerous to be allowed to attend school. He would have pointed out that if he was too dangerous or problematic to keep at school, then the school might have already intervened with resources to help him. Or he may have known to point out that if he was so dangerous, Principal Geivett would not have released him to return home without a chaperone, or at the very least, called to make sure he got home safely and did not physically hurt or injure anyone else on the way.

Moreover, since just roughly 16 lines of the 95 page transcript concern the "possession" issue, and the issue of the school's alleged jurisdiction over what constitutes its "campus," or "property" was never clearly and lawfully defined or presented by the Willows High, (let alone being evidence upon which reasonable minds would rely), it appears that Geivett's highly prejudicial and detailed accounting of Gary's irrelevant discipline record, arguably satisfied the School District of the additional "finding" needed to lawfully expel Gary.

But Gary's classroom disruptions, or the conduct Gary has been suspended for are not the same acts or behaviors that prompted the School's expulsion recommendation. Nor are they relevant evidence that alternatives to correcting the act of firearm possession at school are not feasible, have failed, or that due to the nature of Gary's alleged possession of guns at school,

keeping him in school poses a continuing danger to himself and the school community.

3. The Incident Reports Failed to Prove the Alleged Code Violations and, In Fact, Showed Gary Never Possessed Firearms On School Grounds

The Hearing Packet also contained four (4) pages of Willows Police Department forms, including three pages of Incident Reports and a one-page Property form. With respect to these pages, the only relevant information is: 1) the shotguns were taken solely for "safekeeping[15]" in connection with a "Non-Criminal" incident, after Interquest had taken them from Gary's truck (Hearing Packet at p. 15, **Exhibit H.**); and 2) the Case Disposition was listed as "Closed" (Hearing Packet at p. 16, **Exhibit H.**)

Even though Officer Alves testifies that finding the guns in Gary's truck was not a crime (both in her testimony and evidenced in her property report), Geivett still conducts a re-direct examination of Officer Alves to confirm the purported "accuracy" of the reports. This unnecessary attention on the police report, without a clear corresponding clarification that this document is merely the result of a standard bailment procedure is prejudicial because it has the propensity to suggest that whenever a police report is taken, regardless of what it is for, that somebody has done something wrong. That the School District did not object to allowing this document to be introduced for more than its evidence that Gary's guns were taken per a non-discretionary procedural requirement, was yet another abuse of discretion by the School District that had the tendency to prejudicially affect how Gary might be viewed.

4. The Suspension Correspondence Submitted to the School District Contained False and Misleading Information

With respect to the Suspension Correspondence, dated October 26, 2009, Geivett's statements are again misleading. (Hearing Packet at p. 6, **Exhibit H.**) That letter states in part: "Your child has been suspended for 5 days and makes a total of 6 this year." As worded, and without any clarifying testimony offered, this statement makes it sound like Gary has been

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[15] "Safekeeping" is a category used by police property rooms to sort property. "Evidence" is another such category. Property held for "safekeeping" can generally be retrieved from police at anytime. Property held for "safekeeping" is generally not considered evidence.

suspended six (6) times. To the extent the School District was misled, it should be noted that there have been only three (3) suspensions - and questionable ones at that.

For example, one of the suspensions was for inadvertently parking his car in such a way that the School's oleander bushes were touched. Since that unintentional event was a single isolated incident, there have not been any repeated warnings or attempts to correct that type of behavior. Yet Gary was cited under section 48900(k) suggesting that by accidentally parking into the bushes he somehow "willfully defied" school authority. A more appropriate citation might have been to subsection (f) for damaging school property.

Principal Geivett's Correspondence to Dr. Olmos re "Recommendation for Expulsion" is yet another misleading document proferred in support of expelling Gary. (Hearing Packet at p. 7, **Exhibit H.**) That letter reads in part: "This recommendation is based on past precedence in situations such as this within the Willows Unified School District." Geivett never testifies, nor does the Board ever question what "past precedence" Geivett was referring to or what exactly was meant by "in situations such as this." Instead, Geivett offers conclusory and utterly unexamined statements in an attempt to prove Willow High's response was automatically justified by precedent. Geivett's own testimony suggests otherwise: "...for a good number of years, I've been lucky enough here not to have a situation where weapons were confiscated," indicating there has never been a situation where "weapons were found on campus" let alone a situation involving unloaded firearms found in a locked vehicle parked off-campus. (Transcript at 74, lines 8-10, **Exhibit E.**)

5. Irrelevant and Misleading School Records Were Admitted as Evidence

Concerning the 6 pages of Gary's grades, class schedule, and attendance records, there is no evidence to suggest the School District considered the fact that, but for missing class because of his few suspensions, Gary has a near perfect attendance record. (Hearing Packet at p. 8-13, **Exhibit H.**) In addition, his GPA, while average, also reflects several classes where he has earned top grades. And, of course, none of this has anything whatsoever to do with the two Education Code sections Gary allegedly violated – the specific and only violations that Gary was specifically notified of and that were the *only* issues properly presented for the School District's

consideration.

In deciding to expel Gary based on the evidence presented, it appears the Board did not understand the scope and nature of charges against Gary and the evidence relevant to those charges. It appears the School District abused its discretion by allowing itself to be persuaded by the improperly admitted and highly prejudicial evidence regarding Gary's discipline record, rather than staying focused on the only two issues before it: (1) whether there was substantial evidence that Gary "possessed" a firearm "at school" and (2) if so, whether there was no alternative to expelling him, either because alternative discipline for the same behavior had failed in the past, or because Gary's presence at school was simply too dangerous to justify anything other than expelling him.

6. The Interquest Incident Report Shows No Wrongdoing – At Least None By Gary Tudesko

Interquest Canine's Incidental Maintenance Report is also not very helpful. (Hearing Packet at p.14, **Exhibit H**.) This document does nothing more than show Interquest's involvement that day, and what was found in Gary's truck. Those facts have never been disputed. No documents were submitted in support of what laws, rules, terms, guidance, or authorization they had to search private vehicles beyond the perimeter of the school grounds. Nor is there any indication Willows High attempted to obtain this information either before the hearing or, at the very least, before making its decision expel Gary for a year.[16]

What the incident report does suggest, however, is that Interquest, at the direction of

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[16] Per Willows Board Bylaws 9323: the Board or a Board member may provide a reference to staff or other resources for factual information, ask staff to report back to the Board at a subsequent meeting concerning any matter, or take action directing staff to place a matter of business on a future agenda. (Government Code § 54954.2)

Based on the circus that was the Hearing, the questionable relevance of most of the proffered evidence, etc. the School District should have exercised its discretion to postpone/delay the rest of the Hearing to obtain better information, or at the very least take more than 104 minutes to make their decision. The School District's "determination" was rash, based on a belief that they had no choice, and represents yet another prejudicial abuse of discretion especially since the School District is allowed 10 days under the Code to make its decision.

Principal Geivett, conducted an illegal search of Gary's locked truck and illegally seized the unloaded shotguns contained in it. Again, the fact that there were unloaded shotguns in a truck parked off school grounds does not support Willow High's claim that Gary "possessed" firearms "at school" or on school "property." So, the Interquest search and seizure, along with its "Incident Report," are largely irrelevant. Gary does not dispute the fact that he went duck hunting before school, drove to school, parked off campus, and left his gear, including the shotguns, in his truck that he legally parked on a public street before walking the rest of the way to his classroom.[17]

7. Other Irrelevant and Prejudicial Documents

The Hearing Packet also contained page 13 of the Student Handbook. (Hearing Packet at p. 52, **Exhibit H.**) This excerpt concerns "Dress Standards, Electronic Signaling Devices, Explosive Devices, and False Alarms," and adds nothing to the discussion. The Education Code provision Gary was charged with violating, and the one that contemplates mandatory expulsion *recommendation*, is section 48915(c)(1). That section prohibits possessing a firearm at school. Period. The Student Handbook excerpt does not address firearms, nor is it relevant to the scope of the School District's charge to find that Gary possessed firearms at school. Nor does Geivett offer any helpful testimony concerning the relevance of this document other than to state that it's part of the handbook that all students receive. (Transcript at 28, lines 7-9.)

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[17] The rest of the information and testimony about Interquest that came out at the hearing is a bizarre sideshow. Ms. Brott's testimony showed she had a vague recollection of a meeting in effect (or something) years ago where people discussed what Interquest could, and could not do, and that her "understanding at the time was that, you know, there were parameters of how far out they could search." But she could not recall details. (Transcript at 64, lines 21-23) In responding to what areas Interquest was permitted to search, Geivett testified that "its always been my understanding they, they would do the parking lots...they'd do the perimeters, and they would kind of pick and choose." (Transcript at 65, lines 2-3 and 7-8). But regarding what laws govern where Interquest can legally conduct searches or under what circumstances, Geivett admitted "Yeah, I, I'm not the one to ask." (Transcript at 67, line 7-8).

The only thing that's clear about Interquest's involvement is that it was acting as an agent of the school but was conducting its searches free of charge, both on and off school property, hoping to drum up some new business. And it searched Gary's vehicle off-campus, without even the minimal "reasonable suspicion."

Likewise, the federal "Gun-Free School Zone" flyer adds nothing, but simply adds to the confusion at the hearing by conflating a federal law that Gary was *not* charged with violating with the state Education Code provisions at issue, i.e., only sections 48900(b) or 48915(c)(1). In fact, the introduction of this document, and the ensuing testimony the School District allows – and in some places, encourages – represents one of the School District's more egregious abuses of its discretion. The fact of the matter is that Gary was only given notice of violating sections 48900(b) and 48915(c)(1). Halfway through the hearing, evidently realizing that it cannot get around the "on school grounds" problem, Geivett improperly raises and attempts to argue – *for the first time* – that Gary should be expelled because the firearms in his truck were within a "1000 feet" of school grounds, i.e., in a "school zone," based on a federal law. But there is nothing about "school zones" or areas within "1000 feet" of school grounds in either of the Education Code sections Gary was accused of violating. The school never provided Gary or his parents any notice of a Penal Code or federal law violation, or that he was being expelled for having an unloaded shotgun in a parked vehicle in a "school zone."[18] That constitutes a failure to follow procedures, under section 48918(b)(2).

Moreover, Willows High has no authority to enforce criminal statutes and that's what the gun free school zone laws are. Principal Geivett cannot unilaterally charge Gary with a federal crime, convict him, and then expel him from school based on that "criminal conviction" – and do it all without prior notice to Gary or his parents. That is above Principal Geivett's pay grade. And it violated Gary's due process rights.

8. The Administrator Recommendation of Expulsion Matrix

As a preliminary matter, this matrix is for "Administrators," not the School District

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[18] Moreover, there are exceptions to that particular law that probably apply to Gary. But we need not wander off chasing that red herring, because Gary was never charged, let alone convicted of such an offense. It cannot provide a basis for his expulsion. The point here is that, once again, Willows High has introduced irrelevant material to suggest wrongdoing, and did so without proper notice (to the extent one can "properly" notice irrelevant, prejudicial material). More violations of the Education Code provisions that govern expulsion proceedings, in particular, section 48918(b)(2)'s requirement that all charges and facts supporting them be specifically noticed ten days before any hearing.

Governing Board. As noted at the top of the form: "This matrix is a tool designed to help administrators decide when expulsion of a student is deemed mandatory, expected, or at administrators discretion." In this case, it should have been used only by Geivett in determining whether he had to *recommend* expulsion to the School District. Thus, Geivett's repeated insistence that the School District *must* expel Gary, based on the matrix, was improper and served only to further confuse the School District of about its "discretion" in considering Gary's case. Arguably, Geivett could have used the matrix to explain why he was making a particular recommendation, but it was wrong for him to instruct the School District to use the matrix in making its independent decision. But Geivett repeatedly told the School District it had no discretion. To the extent the School District relied upon the matrix, or Geivett's instruction, this was a "mistake of law" and constitutes an "abuse of discretion."

Actually, the matrix could have been useful had anyone noted that for an administrator to deem expulsion "mandatory" or "expected," the "Act *must* be committed *at school* or school activity." Significantly, there is nothing in this document that refers to acts committed within a "school zone" or "within a 1000 feet of school grounds."

D. The Testimony Presented Was Riddled with False Statements of Fact and Law; The School District Abused Its Discretion By Adopting Them in Its Expulsion Order

As previously discussed, the Hearing Transcript of the (**Exhibit E**) shows that Principal Geivett was permitted to testify about state and federal laws that had nothing to do with the noticed charges against Gary. Geivett discussed the federal Gun Control Act and California's Penal Code section 626.9 (Gun-Free School Zone Act), neither of which applied to Gary's case, and neither of which were mentioned in Gary's Notice of Expulsion Hearing. It was only by inappropriately "borrowing" the school zone definition in those statutes and inserting them into the Education Code sections that Geivett was able to improperly convince the School District to expel Gary.

From the outset, Principal Geivett glossed over the difference between "school grounds" and a "school zone" – he simply expands the terms used by the Legislature when it established which offenses warranted mandatory expulsion, changing "at school" and "on school grounds" to

"on *or near* school." This is seen in the prepared opening remarks that Geivett read into the record – remarks adopted by the School District as manifest in its Notice of Expulsion Order. Geivett states: "We're requesting expulsion in this case because the law requires that we do so, pure and simple." (Transcript at 12, lines 7-9, **Exhibit E.**) And further:

> To be clear, we are requesting Gary's expulsion under Education Code Section 48900(b), possessed, sold, or otherwise furnished a firearm, knife, explosive or other dangerous object, and under Section 48915 subsection (c) number (1), possessing, selling, or furnishing a firearm. Under the Education Code, this is a mandatory expellable offense ... I am required by law to recommend the student's expulsion. *And even further, you as a Governing Board are required by law to expel this student.* Violation of Education Code 48915(c) is a shall offense, which is not permissible in nature if you find the facts to substantiate the grounds here for the recommendation for expulsion. In this case, quite simply, Gary possessed a firearm in his vehicle along with shotgun shells. The potential for danger to himself and others for the *possession* of two shotguns in his truck *on a district campus* does not require lengthy analysis.

(Transcript at 14, lines 3-25, emphasis added.)

As explained above, as a matter of law, Gary did not "possess" the shotguns as that term is interpreted in the context of the code provisions at issue. Nor did he possess them "at school," or "on campus" as that term is commonly understood; the truck was not parked on "school grounds." Thus, Principal Geivett's prepared opening remarks include prejudicial errors of both fact and law, errors unfortunately adopted by the School District.

Out of the 96 page transcript, with 25 lines per page, only 16 lines were devoted to the discussion of "possession." (Transcript at 14, lines 21-25 and 15, 1-11, **Exhibit E.**) And the "discussion" consisted of conclusory remarks made in passing. Geivett never addressed whether "possession" meant having immediate control over an item, e.g., carrying it in a jacket or backpack, or whether it included having the item stored in a locked vehicle parked off school property, whether on a nearby street or several blocks away. That is, he never defined the term; he never explained to the School District how or why that "element" of the alleged violation was satisfied.

In similar fashion, Geivett fails to instruct the School District on the definition of "school grounds." That would not be unusual if Geivett adopted the common meaning of that term. But he doesn't. The exact language of the Education Code provision relied upon by Geivett to make

his case states that an expulsion recommendation is mandatory for certain acts *if it is found those acts have been* committed "at school or at a school activity off school grounds." The reference to "school grounds" is an obvious reference to the school buildings and surrounding property. But Geivett never addresses "school grounds" in terms of it being an element of the alleged section 48915(c)(1) violation. Nor does he explain how or why Gary's truck was "on school grounds" when it was in fact parked on Willow Street. The only time he addresses the issue is toward the end of his testimony when he tries to justify ordering Interquest to search Gary's truck and confiscate the shotguns. At that point, Geivett claims he has "jurisdiction" over student vehicles anywhere within 1000 feet of the school grounds. (Transcript at 14, lines17-23, **Exhibit E.**)

E. Tudesko Was Not Afforded a Fair Hearing Before the Willows School District

Yet another basis for overturning the School District's expulsion decision is the complete disconnect between the Notice of Expulsion Hearing and the final Expulsion Order. Because of this fatal flaw, the expulsion hearing was hopelessly compromised and Gary's due process rights and right to a fair hearing were violated, as further described below.

1. The Notice of Expulsion Contained Two Specific "Special Charges" Based on a Single Event: The Alleged Possession of Firearms On School Grounds

On November 6, 2009, the School District mailed its Notice of Expulsion Hearing to Gary's mother, Ms. Parisio, advising her that Principal Geivett had referred her son Gary to the School District for an expulsion hearing. **(Exhibit B)** Geivett recommended Gary's expulsion for allegedly violating sections 48900(b) and 48915(c)(1). There were no other "Specific Charges" noticed. The "Specific Facts Substantiating the Charges" were limited to one event: on October 26 Gary left two unloaded shotguns in his truck (after duck hunting that morning) and parked the truck north of campus on a public street. Based on these two code sections and those limited facts, Geivett accused Gary of "possessing" firearms "on school property" in violation of the two code sections cited. (Hearing Packet at p. 1-3, **Exhibit H.**)

The only other information provided with the Notice of Expulsion Hearing was a single-page attachment with three short paragraphs excerpted from the Willows Student Handbook, entitled "Section 2: Expected Student Behavior and Discipline Policies and Regulations: Purpose

of Student Discipline and Expected Behavior." The attachment did not reference any rules or policies relating to the "Special Charges" cited in the notice, nor did it mention any rules or policies about firearm possession, nor searches of private property on or off school grounds. The single-page attachment merely stated the purpose of student discipline and expected behavior. No specific disciplinary rules were actually stated, merely general expectations about attendance, assignments, and respecting others.

There was nothing in the "Notice of Expulsion Hearing" or the attachment that provided Gary or his parents with notice that the expulsion hearing would concern anything other than the October 26 incident, i.e., Gary's alleged violation of two Education Code sections by parking his truck off-campus with the duck-hunting shotguns locked inside. Willows High failed to provide notice about other alleged violations or behavior that would be reviewed in support of the expulsion recommendation. For example, the school's notice said nothing about violating Penal Code section 626.9 or "gun-free zones." Nor was there any notice provided to inform Gary and his parents that past records of school discipline (and Gary's grades) would be relied upon to support Gary's expulsion for the firearm possession incident, or that he was being expelled for any reason other than that single incident, as opposed to the previously "un-noticed" charge that he violated Section 48915(b). In fact, without the Section 48915(b) charge, there would be no reason to review Gary's past behavior, at all – the whole point of this mandatory suspension and expulsion case was that Gary had allegedly violated a zero-tolerance ban on guns at school, not that he had bad grades or unrelated discipline problems in the past. And that is one reason why the pre-hearing notice provided to Gary and his parents was legally insufficient.

2. The Notice of Expulsion Was Legally Insufficient to Support the Final Expulsion Order of the District

"Civil as well as criminal statutes must be sufficiently clear as to give a fair warning of the conduct prohibited, and they must provide a standard or guide against which conduct can be uniformly judged by courts and administrative agencies." (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 231.) This constitutional standard has been applied to regulations established by school districts, the violation of which result in suspension or expulsion. In *Myers*,

the court held a school regulation prohibiting "extremes of hairstyles" to be unconstitutionally vague. "The importance of an education to a child is substantial [citations], and the state cannot condition its availability upon compliance with an unconstitutionally vague standard of conduct." (*Myers v. Arcata etc. School Dist.*, (1969) 269 Cal.App.2d 549, 560.) In a similar case the term "misconduct" was held to violate the due process clause of the Fourteenth Amendment by reason of its vagueness. (*Soglin v. Kauffman* (W.D.Wis. 1968) 295 F.Supp. 978, 991; see *Abella v. Riverside Sch.Dist.* (1976) 65 Cal.App.3d 153.)

And in an action by California high school students who were suspended and expelled following a period of student unrest, the students were reinstated and given remedial measures to permit them to make up work missed, where the students' constitutional rights, including confrontation of witnesses and the privilege against self-incrimination, were violated during the expulsion procedure. (*Gonzales v. McEuen* (C.D. Cal.1977) 435 F.Supp. 460.)

All of these cases acknowledge the constitutional due process protections afforded students, and often embodied in the Education Code. On the notice issue, pursuant to Education Code section 48918(b) written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include all of the following:

> (1) The date and place of the hearing.
>
> (2) A statement of the specific facts and charges upon which the proposed expulsion is based.
>
> (3) A copy of the disciplinary rules of the district that relate to the alleged violation. (Only the 1 page from the Student Handbook was provided)
>
> (4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.
>
> (5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses....

(Educ. Code § 48918(b).)

The notice the school provide Gary and his parents fell far short of these requirements.

3. The District Violated Section 48918(b)(2) By Raising a New Specific

Gary could be lawfully expelled.

Willow High's failure to expressly notify Gary of the section 48915(b) charges and its subsequent use of the discipline record - a record that contains absolutely no documentation of, nor relates in any way to discipline for the act of firearm possession - to support his expulsion based on those new charges, violated Gary's due process rights. Gary had no way of knowing Willows High would improperly present such evidence or that it would be used to support the recommendation for expulsion. He was thereby ill-equipped to adequately speak to the highly prejudicial nature of the records and related testimony presented at the hearing, or to point out the lack of relevance to the cited elements he expected to defend against. If Gary had been notified that his expulsion might also be based on evidence of the findings necessitated by section 48915(b)'s subsection (1) or (2), rather than just evidence about whether he "possessed" firearms "at school,"Gary would have prepared differently, or at least have had the opportunity to do so.

He was denied that opportunity because Willows High violated the mandatory notice provisions of Section 48918(b)(2).

4. The District Violated Section 48918(b)(3) By Failing to Provide the Disciplinary Rules Related to the Violation Cited in the Notice

A cursory review of the Hearing Packet and, in particular, the Notice of Expulsion Hearing letter (Hearing Packet at p.1-4, **Exhibit H.**) reveals a failure of the District to provide Gary and his parents with all relevant disciplinary rules associated with the "Specific Charges" noticed in the letter. As discussed above, the single-page attachment to the letter is inadequate on its face. It explains nothing. (Hearing Packet at p. 4, **Exhibit H.**) This failure constitutes a violation of Section 48918(b)(3), quoted above, and a failure to follow procedures.

5. The Notice of What Constituted "School Grounds" Was Insufficient

Principal Geivett's conclusion that the incident occurred "at school," on the school "property" or as part of the "campus" without any clear definition of what "campus" or school "property" means is so vague and standardless that Gary was without any real opportunity to refute the charges against him. Despite Ms. Parisio's repeated requests of school administrators before and at the expulsion hearing, no one provided her with any written policy, code sections, or

regulations for her to review or rebut. As noted above, Geivett's testimony changed at least three times during the hearing itself. First he declared Gary must be expelled because the truck and firearms contained therein were found on campus, then "on or near" campus, then within 1000 feet of campus. And it appears the School District nonetheless adopted one of the latter two "definitions," without saying which. The School District's approval of the Geivett's offering evidence of its "opinions," "understandings" and his self-serving pontifications about what he would consider his jurisdiction or "school grounds" resulted in an unfair hearing and denied Gary the opportunity to fully understand and then challenge one of the essential elements of the charges against him.

6. The District Improperly Relied Upon Hearsay Evidence; None of Gary's Teachers Were Present Testify On the New Charge

In addition to the lack of notice regarding the new charge for violation of section 48915(b), and the lack of relevance of the evidence presented on that charge, the evidence suffers from yet another defect: it is hearsay evidence about disputed facts. Under Education Code Section 48914(f) (regarding public school expulsion hearings), evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Administrative reports may not be relied on when evidence is conflicting and witnesses are readily available. Thus, e.g., in an expulsion proceeding against a high school student for his alleged assault on two other students, the school district failed to meet its burden of establishing cause for the expulsion by a preponderance of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs because: (1) the evidence at the hearing was in sharp dispute; (2) the district relied on a vice principal's report and some of the written statements by witnesses instead of calling the witnesses to testify; and (3) there was no showing that the witnesses were unavailable or of any substantial reason precluding their testimony. (*John A. v. San Bernardino City Unified School Dist.* (1982) 33 Cal. 3d 301.)

Similarly, here, Principal Geivett merely read referrals into the record regarding complaints by other teachers, and concerning matters in dispute. None of Gary's teachers testified

at the expulsion hearing, nor was there any indication they were unavailable to do so.

7. Improper Conduct During and After Closed Session Deliberation

Under section 48918(c) the School District was allowed to meet in closed session for the purpose of deliberating and determining whether Gary should be expelled.

However, it appears Mr. Geivett participated in those discussions. once the School District allowed Principal Geivett to participate in the closed deliberation session, Gary and Ms. Parisio should arguably also have been included in the closed session also. Section 48918(c) mandates that if the governing board "admits any other person to a closed session, the parent ... [and] the pupil ... also shall be allowed to attend the closed deliberations."

After the closed deliberation, the final disposition of the School District should have been recorded and transcribed for the public record. Section 48918(g) mandates: "A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and *complete written transcription* of the proceedings can be made."

The recording stops after the School District declares that it is adjourning for closed session. After adjourning to closed session for nearly 2 hours, the Board appears again and publicly announces its disposition. None of the Board's findings, reasons, or determinations however, are captured by the recording, and are thus not reviewable by the transcript.

Since the hearing transcript, and more specifically the School District's declaration of its decision and reasons in support, are arguably the key evidence relied upon in preparing an appeal and Gary has a statutory due process right to appeal the expulsion, it necessarily follows that he be allowed to review a *complete* and accurate record of the actions against him. The inability to specifically review documentary and recorded evidence of the School District's final action, *as it was announced* on November 19, 2009, prejudicially disadvantages this Appeal.

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V. THE SCHOOL IMPROPERLY BASED ITS EXPULSION RECOMMENDATION ON EVENTS STEMMING FROM VIOLATIONS OF GARY'S FOURTH AMENDMENT AND PROCEDURAL DUE PROCESS RIGHTS THAT OCCURRED DURING THE SEARCH, THE INITIAL SUSPENSION, AND THE EXTENDED SUSPENSION

A. The Search of Tudesko's Truck Was Illegal

Public schools enjoy a unique place in California law. All public school students and staff have a constitutional right to a safe school: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (Cal. Const, art. I, § 28, subd. (c).) Consistent with this right the Legislature has required each school board to establish rules and regulations to govern student conduct and discipline (Ed. Code, § 35291) and has permitted each local district to establish a security department to enforce those rules (Ed. Code, § 38000). (See *Randy G., supra*, 26 Cal.4th at pp. 562-563.)

In furtherance of this objective, the Board of Education has stated that it is

> fully committed to promoting a safe learning environment and, to the extent possible, eliminating the possession and use of weapons, illegal drugs, and other controlled substances by students *on school premises and at school activities*. As necessary to protect the health and welfare of students and staff, school officials may search students, their property, and/or district property *under their control* and may seize illegal, unsafe, or otherwise prohibited items.

(Willows Unified School District Board Policy ("Board Policy") §5145.12, emphasis added, **Exhibit I.**) (See also Board Policy §5145.12 "school officials may search students, their property, and/or district property under their control...".)

But school searches are not without limitation. Nor are they authorized when they occur outside the bounds of the school's jurisdiction. As an agency of *limited authority*, school districts may only exercise those powers granted to it by statute. *Yreka Union High School Dist. v. Siskiyou Union High School Dist.* (Cal.App.3d Dist. 1964) 227 Cal.App.2d 666.) No statute authorizes schools to ignore the constitutional rights of students.

The Fourth Amendment to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." The Amendment "protects people from unreasonable

government intrusions into their legitimate expectations of privacy." (*United States v. Chadwick* (1977) 433 U.S. 1, 7.) This right of personal security is inherent in the concept of due process, and therefore applies as well to state officers, including public school officials, through the Fourteenth Amendment. (*Vernonia School Dist. v. Acton* (1995) 515 U.S. 646, 652; *Elkins v. United States* (1960) 364 U.S. 206, 213; 80 Ops.Cal.Atty.Gen. 354, 355 (1997)**(Exhibit D)**.)

In *New Jersey v. T.L.O.* (1985) 469 U.S. 325, 83 L. Ed. 2d 720, (one of the leading cases dealing with school searches) the United States Supreme Court recognized an exception to the warrant and probable cause requirement for searches conducted by public school officials and found that while school searches do not need to be based on probable cause, the legality of a school search still depends on the "*reasonableness, under all the circumstances*, of the search." (*Id.* at 341, emphasis added.)

Schools must balance the constitutional rights of students against their responsibilities to students and parents. Against this backdrop, in order to protect school grounds from violence or to prevent an increase in drug use among students, warrantless searches or detentions of students have been upheld under the general principles applicable to administrative or regulatory searches, provided appropriate safeguards are available "*to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.'*" (*T.L.O., supra*, 469 U.S. at 342, fn. 8; *Vernonia, supra*, 515 U.S. at 653.) And that school officials do not act in *"an arbitrary, capricious, or harassing manner"*. (*Randy G., supra*, 26 Cal.4th at 566.)

The *T.L.O.* Court further explained that a school search would be "justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student *has violated* or *is violating* either the law or the rules of school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search [...]" (*Id.* at 342, Emphasis Added.)

In *In re William G.* (1985) 40 Cal.3d 550, the California Supreme Court elaborated: "Searches of students by public school officials must be based on a reasonable suspicion that the student or students to be searched *have engaged, or are engaging, in a proscribed activity* (that is, a violation of a school rule or regulation, or a criminal statute). *There must be articulable facts*

supporting that reasonable suspicion. Neither indiscriminate searches of lockers or more discreet individual searches of a locker, a purse or a person, [...] can take place absent the existence of reasonable suspicion. Respect for privacy is the rule–a search is the exception...this standard requires articulable facts, together with rational inferences from those facts, warranting an *objectively reasonable suspicion* that the student or students to be searched *are violating or have violated* a rule, regulation or statute."

The corollary to this rule is that a search of a student by a public school official is *unlawful if predicated on mere curiosity, rumor, or hunch. (Id.* at 564,) Emphasis Added.)

B.C. v. Plumas Unified School Dist., supra, 192 F.3d 1260, questioned the constitutionality of a random dog-sniffing search at school and concluded that the random and suspicionless dog search was unreasonable under the circumstances. The court noted that while deterring student drug use is an important school interest, nothing in the record showed that the high school there even had a drug crises or problem.

Citing *Chandler v. Miller* (1997) 520 U.S. 305, 313, (citing *Vernonia,* 515 U.S. at 652-53.) the court reasoned that in the absence of a finding that an individualized suspicion requirement would jeopardize the school's interests, "to be reasonable under the Fourth Amendment, a search must ordinarily be based on individualized suspicion of wrongdoing." The school officials there admitted they had no "individualized suspicion of wrongdoing" by any student.

Under all of the circumstances, the search of Gary Tudesko's truck fell on the wrong side of the constitutional scale. It was not based on the requisite "objectively reasonable suspicion." Like the dog-sniffing search found unconstitutional in *B.C v. Plumas* (supra) it was not connected to any gun-threat, problem, or crisis at all. In fact, the record reflects that Willows High has never *had* any gun problems as Geivett indicates in his testimony at the hearing. (Transcript at 74, lines 8-10, **Exhibit E.**)

Even under the more liberal administrative search allowance, Willows High still failed to show how, or under what set of specific circumstances its random search was justified without any "individualized suspicion" that Gary was, or had, violated any rule or law whatsoever as

required by *In re William* (supra). The record is absolutely devoid of any facts, let alone any suspicion that Gary had or was engaging in any unlawful acts. He was in class. And the allegedly random classroom search on the campus doesn't help Willows High either. Principal Geivett admits they "found absolutely nothing in the, in the classrooms that, that would indicate we need to, need to do the search except for one student that had, had gunpowder residue in his hat." (Transcript at 63, lines 8-11, **Exhibit E.**) And that student wasn't Gary nor was that student connected to Gary in any way. [19]

Willows further did not support its failure to show that any individualized suspicion of Gary was unecessary, by demonstrating that that Fourth Amendment requirement would jeopardize any of Willows interests in keeping the school and its students safe.

Instead, after conducting the random classroom search with Principal Geivett, Interquest encouraged Geivett to go back to work, that they would proceed without him. Then, without any evidence of what laws or guidelines their search was subject to, appears were just sort of left to search based on mere curiosity, a hunch, or, perhaps equally likely, an apparent need to drum up business. Geivett testifies that "what basically happened is that they said, okay, well, we're free here, Mr. Geivett, if you want back and get some work done, we're just gonna do *kind of* the perimeter of the school." (Transcript at 63, lines18-24, **Exhibit E**, emphasis added.)

And the School District was satisfied with that testimony. The warrantless administrative search of Gary's truck would only have been constitutional had Gary had been provided any safeguards to ensure that his Fourth Amendment privacy expectations in his personal possessions, lawfully stored off-campus, were not "subject to the discretion of the official in the field." But this did not happen. No safeguards, in the form of school signs, student handbook, etc. are provided to Willows students giving them notice that they do not have a reasonable expectation of privacy in their vehicles lawfully parked off-campus. And Principal Geivett, upon being questioned about

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[19] "Arguably, the student who had gunpowder residue on his hat might have been subject to some type of further search, e.g., of his locker of his car, if on a campus parking lot. But there was no evidence tying Gary to that other student or justifying a random search of Gary's person or property, especially off school grounds."

what laws governed Interquest's search, couldn't say what they were either, admitting: "Yeah, I, I'm not the one to ask." (Transcript at 67, lines 7-8, **Exhibit E.**)

Moreover, Willow High's failure to submit any evidence to support of what laws, rules, terms, guidance, or authorization Interquest had to search beyond the perimeter of the school campus, (let alone any indication they attempted to obtain this information in preparation for the Hearing) suggests that Willows simply *has no safeguards in place* to justify searching off-campus vehicles.

At best, Ms. Brott stated she remembers sitting in on something, (though she does not remember exactly if it was a meeting or what it was), when Interquest was first contracted (roughly 4 years ago?) where what Interquest could, and could not do, was covered, and that her "understanding at the time was that, you know, there were parameters of how far out they could search" (Transcript at 64, lines 21-23, **Exhibit E.**)

At any rate, Interquest's involvement, as an authorized agent of Willows, only makes the whole search even more arbitrary. As presented to the School District at the Hearing, Interquest did not have a compensable contractual agreement to even *be* at the Willows High campus on October 26, 2009 in the first place.[20] Nor, because of financial restraints, had they been contracted with at all during the previous school year. (Testimony of Geivett at p.64, lines 4-6.). Geivett testified that on the morning of October 26, 2009, Interquest said "we're free here." Geivett further testified that "this year, they, they agreed to come in gratis and do at least one day in hopes,... of marketing...being contracted again." (Transcript at 63, line 19 and 64, lines 6-10., **Exhibit E.**)

As an authorized agent of Willows High, the fact that Interquest offered to search the school *for free* is significant not only because it suggests Interquest intended to find some kind of illegal contraband at the school before it left that day, but also because it is readily apparent from the record that in deciding to expel Gary, the School District did not meaningfully appreciate the

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[20] As previously noted, after a Public Records Act Request was made, a "contract" dated October 26, 2009, and which appears to have been signed by Dr. Olmos turned up *after* the hearing so was not considered or examined by the School District. (See Interquest Contract at **Exhibit J.**)

fact that Willow's *main* evidence in support of what constitutes the campus or school "property" was largely dependent on the alleged lawfulness of Interquest's search - a search they conducted alone, without the presence of any school officials, and who offered to search the school for free in hopes of marketing themselves to the District.

Yet the record is silent as to why or under what legal authority, if any, Interquest searched vehicles parked on public streets beyond the school's perimeter fences, including Willow Street. No evidence of contractual terms, agreements, authorization, or guidelines regarding Interquest's search boundaries have been produced. Nor was any presented at the Hearing, and the School District failed to exercise their authority to postpone the hearing to further obtain this crucial information.

And Willow's main witness provided no worthy answers either - opining only that "perimeter of the school means that, back behind the tennis courts, the junior lot, the senior lot, things like that, and kind of all around the fenceways that border that." (Transcript at 63, lines 21-24, **Exhibit E**), that Willows "contracted with them to do searches wherever they needed to do a search." (Transcript at 65, lines 12-14, **Exhibit E**) and that it was always his "understanding" that Interquest was allowed to "do parking lots, they'd do perimeters, and they would kind of pick and choose." (Transcript at 65, lines 7-8, **Exhibit E.**)

"Pick and choose?" This is certainly *not* what the California Supreme Court contemplated when it directed that school officials not act in *"an arbitrary, capricious, or harassing manner"*. (*Randy G., supra*, 26 Cal.4th at 566.)

School searches cannot be left to the unbridled discretion of school officials, let alone third-party security companies in need of business. Nor does it comply with due process notice requirements. And there is virtually no follow-up when an unidentified male voice from the Board questions the legitimacy of a policy that allows this private group to "pick and choose." (Transcript at 65, lines 20-23, **Exhibit E.**) And "they just chose what they wanted to do and, and how much they wanted to do, correct?" (Transcript at 66, lines 6-8, **Exhibit E.**)

And Ms. Brott's "understanding" from an event from at least four (4) years ago that she also does not really remember, (i.e. could have been an informal meeting or discussion that

Interquest did not take part in, raising doubt as to whether Interquest had ever been given guidelines, let alone agreed to them), along with Geivett's empty "understanding" appears to have been received by the Board as sufficient evidence that on the day of the incident there was an *existing* agreement with Interquest wherein they a) agreed to specific rules about where they were permitted to search, and that b) in the absence of any documentary or percipient witness testimony whatsoever demonstrating express definitions, terms, or agreements listing precisely where Interquest was allowed to search, that by virtue of performing their search on Willows Street, Interquest's unaccompanied search must have lawfully complied with those rules. - *despite* the fact that Geivett testifies that Interquest's search that day was gratuitous, indicating they were trying to get business from the District, (Transcript at 64, lines 6-10, **Exhibit E**)

During the Hearing, the School District essentially fails to exercise its discretion to more fully examine the circumstances allegedly supporting the search. By failing to posit any meaningful questions about it to ensure the search complied with school searches under the Fourth Amendment, they failed to obtain the "articulable facts" to support the constitutionality of the search in the first place. Nor does the record reflect any "rational inferences from those facts" -thereby also violating the District's own policy that "where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record." (Willows Policy Manual Section 5144.1 **Exhibit I**)

For example, no questions were asked about whether "all around the fenceways" meant inside the campus, or on the outward facing portion, or how Geivett knew where Interquest would search without going with them and/or without having a current contract or agreement with them with specified terms. No one asked if Principal Geivett had ever accompanied them before, participated or negotiated in forming the alleged terms of their search guidelines. In fact, given Geivett's testimony that Interquest was contracted 4 years *before* Geivett worked at Willows is even more reason for the School District to have rejected Geivett's testimony as substantial. Yet the School District accepts this and much more. Despite the fact that Geivett testifies that he is "not the one to ask" about the laws governing Interquest's searches, the School District accepts as credible evidence Geivett's "understanding that they, would do the parking lots," (Transcript at

65, lines 1-3, **Exhibit E**) but never personally question why Interquest was then out on a public street off-campus. Wouldn't Willows *want* to accompany them? Willows may be liable for an any ensuing unlawful administrative search.

They never questioned why Principal Geivett allowed Interquest to conduct the rest of the search alone, without the presence of any school officials. And the question of whether Interquest was even allowed to conduct unaccompanied searches in the first place was never posed. The Hearing Transcript does not reflect whether the School District considered the connection/motive between a third-party security group who was allowed, as an agent of the school, to conduct an unsupervised search and who, at the same time, were hoping to market themselves to the District. "We have not contracted with them all of last year due to financial contraints." they came on their own to market their business. (Transcript at 64, lines 4-11, **Exhibit E.**) The record does not reflect whether the School District considered the possibility that a private company, performing work for free in hopes of marketing themselves to schools, and allowed to proceed unsupervised, may have gone beyond the perimeters of their search jurisdiction in furtherance of obtaining business. The School District doesn't appear to question the irony that Interquest appears to have encouraged Geivett to go back to work so they could continue searching alone, and then right before their search is over, "finds" the best marketing tool it could have hoped for!

In short, none of the foregoing justifies the lawfulness of the search, nor even begin to describe how such search was "reasonable under the circumstances." If anything, the School District's proferred "evidence" at the Hearing raised more questions than answers and demonstrates the *unreasonableness* of the search.

Instead, the School District's review of what happened on October 26, 2009, and its unanimous decision to expel Gary, was limited to the recitations made in Notice Letter, and unquestioned statements made by Principal Geivett, namely that on October 26, 2009, at 9:15am, the High School Administration was informed that during a "routine canine sweep" by Interquest, one of their dogs "alerted" on a truck located in the "campus parking area." (Expulsion Order, **Exhibit C**; Testimony of Principal Mort Geivett, Transcript at 12, line 18, **Exhibit E.**) That characterization is, of course, misleading. There are only two school parking lots. Tudesko's truck

was in neither. (WHS Student Handbook at 27, **Exhibit G**) And given the fact that it had been at least over a year since Interquest had been contracted with, there was also nothing "routine" about it.

In any event, Geivett went on to testify that Interquest's dog "alerted" to Gary's truck. (Transcript at 64, lines 1-3, **Exhibit E**.) Interquest then told Principal Geivett about the "alert" and he called "School Resource Officer" Tricia Alves, requesting that she run a license plate check on the truck. It was found that the truck belonged to Gary. (Expulsion Order, **Exhibit C**; Testimony of Geivett, Transcript at 12, lines 18-22, **Exhibit E**.)

Gary was pulled out of class and told to accompany Geivett and Officer Alves to Gary's truck. (Geivett, Transcript at 13, lines 2-3, **Exhibit E**.) Geivett testified that, while he took Gary to his truck: "I asked him if he had something in his truck that he should not have on campus. He told me he had two shotguns and some shells in his truck. As we continued to walk to his truck, I told him the possession of weapons on or near a school campus is not only a suspendable offense but also an expellable offense." (Transcript at 13, lines 3-9, **Exhibit E**)

With a uniformed police officer, two uniformed Interquest agents and their search dog positioned next to Gary's truck, Principal Geivett told Gary to unlock the vehicle – he did not ask Gary's permission or otherwise acknowledge that Gary had a choice in the matter – and told authorized Interquest to search Gary's truck and seize the hunting gear. And at no time during either their walk to Gary's truck, or during the subsequent search did Principal Geivett, or anyone from the school, make any attempt to notify Gary's parents, despite the fact that Gary was essentially being questioned by the police during the confrontation and subsequent search of his vehicle. To a 16-year-old, this situation presented an intimidating and harassing search the *Randy G.* court warned against. The Willows District's own policies and regulations regarding "Questioning and Apprehension" state that except in cases of child abuse or neglect, "the principal or designee shall notify the student's parent/guardian when a law enforcement officer requests an interview on school premises." (Board Policy §5145.11, **Exhibit I**.)

Interquest then turned the shotguns over to Officer Alves. Hearing Packet at 14-15, **Exhibit H**) Officer Alves took the firearms for "safe keeping," and filled out a property form.

(Testimony of Alvez, Transcript at 33, line 1, **Exhibit E**; Hearing Packet at 15-16, **Exhibit H.**) She did not take them as part of any criminal investigation. In fact, Officer Alves did not believe any criminal law had been violated, and later confirmed that in a conversation with her superior, Chief of Police William Spears, in which they both decided no arrest or prosecution was warranted. (Transcript at 38-39, **Exhibit E.**)[21]

Notably, though we have found no published opinion in which an administrative search of a student's vehicle was upheld when the vehicle was not parked on school grounds, the most relevant evidence to come out of Willow's sanctioning of Interquest's search and seizure is that it proves Gary's truck (with the unloaded shotguns locked inside) was *not* parked on school property, i.e., it is exculpatory evidence showing he did *not* possess firearms *on school grounds* and thus did not violate the Education Code or school policy. For our purposes in this Appeal, Interquest's search and the documents relating to it, provide indisputable evidence that the shotguns were never "on campus"[22] and thus not within Willow's search jurisdiction. The search

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[21] At the expulsion hearing, the fact that the police didn't think Gary committed a crime and only took the shotguns for safekeeping did not come up in Principal Geivett's direct examination of Officer Alves – his witness. Gary's mother had to elicit that information from Alves on cross-examination. Incredibly, Geivett then kept Alves on the stand – and tried to "rehabilitate the witness" on re-direct. He asked Alves to look at two Police Department forms, the Police Department's "Significant Incident" form and "Property and Evidence" form (Hearing Packet at 17-18, **Exhibit H.**), and without discussing what the forms revealed, had Alves confirm their authenticity, as if police activity by itself cast suspicion on Gary or suggested criminal activity. Geivett then stated: "OK. I just wanted to make sure that we clarified that." (Transcript at 41, line 22 and 42, line 12, **Exhibit E.**) Actually, the forms as filled out confirmed the answers Alves gave to Gary's mother, i.e., that no crime had been committed. For example, the blank space on the Incident form following the word "Crime:" is filled in with the words: "MISC Found Property / Non-Criminal." And the blank after "Property Status:" states "Release On Demand." (Hearing Packet at 17, **Exhibit H.**) Similarly, the "Property and Evidence form has five boxes across the top: 1) Stolen; 2) Found; 3) Evidence; 4) Safekeeping; and 5) Contraband to be destroyed. The box that was checked was "Safekeeping," just as Officer Alves testified in response to questions from Gary's mother. In short, there was no reason for Geivett's redirect examination – at least none that would help the Governing Board get to the truth or insure a fair hearing.

[22] A public records act request was made on November 25, 2009 requesting certain documentation regarding the incident of October 26, 2009, including any and all writings re Interquest Detection Canine involvement. (**Exhibit K.**) The only responsive document to that request was a single-page purported agreement, dated October 26, 2009, between Interquest and

should therefore not have been used to support the expulsion recommendation.

B. The October 26, 2009 Suspension

"The Board shall provide for the fair and equitable treatment of students facing suspension and expulsion by affording them their due process rights under the law. The Superintendent or designee shall comply with procedures for notices and appeals as specified in administrative regulation and/or law. (Education Code sections 48911, 48915, 48915.5; Board Policy: "Student Due Process," **Exhibit I.**)

Per section 48900.5, "Suspension shall be imposed *only when other means of correction fail to bring about proper conduct...*" And while students may be suspended for any of the reasons enumerated in Section 48900 upon a first offense, the principal, or superintendent of schools, must first determine that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process.

Back in Mr. Geivett's office with Mr. Geivett and Officer Alves, and without any explanation or discussion of any intervention or alternatives to suspension, Geivett told Gary he had violated Education Code section 48900(b) and was immediately suspended for 5 days. (Geivett at p.13, lines 15-19.) Neither of the Interquest agents were present. Geivett told Gary to leave campus immediately and was barely allowed to question the suspension, let alone explain that he had been lawfully duck-hunting that morning and had intentionally parked off-campus to avoid bringing the unloaded guns in his truck onto school grounds. There was no discussion of any intervention for Gary's alleged problem behavior, or suggested alternatives to the suspension.

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the Willows Unified School District for services on October 26, 2009 that appears to have been signed by Dr. Olmos that day. The terms of that agreement contract for 3 visits at $1 each, and state the inspections are "under the auspices and direction of the District administration with Interquest acting as agent of the District while conducting such searches." "Parking lots (automobiles), grounds, and other select areas as directed by District officials, shall be subject to inspection. Contraband detected on District property is the responsibility of the District."

A subsequent request was made for the "security tape" Geivett told Ms. Parisio had been recorded of Interquest's search. Counsel for Gary has been told by counsel for the District that the tape was destroyed. (See Email Exhange Between C.D. Michel and Matt Juhl-Darlington, **Exhibit L.**)

Gary was allowed to go back to his truck unaccompanied, and drove home. No one from the school supervised his departure or confirmed that he returned home safely.

Under section 48911, subsection (b), a suspension by the principal shall be preceded by an informal conference between the principal, the student, and any other persons who were responsible for referring the student to the principal. Section 48911(b) provides in pertinent part:

> (b) Suspension by the principal... *shall be preceded by an informal conference* conducted by the principal... between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal... At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

Gary's initial suspension violated section 48911(b) because Gary was not afforded a meaningful opportunity to discuss and question the so-called "evidence" against him either with Principal Geivett, or with Interquest - the school employee responsible for alerting the principal to the firearms in Gary's truck.

Subsection (c) of section 48911 further provides that the principal may suspend a pupil without affording the pupil an opportunity for a conference if the principal determines that an emergency situation exists:

> "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent of schools to constitute a *clear and present danger* to the life, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

There is no evidence that when Interquest found unloaded firearms in Gary's truck that any sort of "emergency situation" warranted the way Gary was initially suspended - without being given the opportunity to have a meaningful informal conference beforehand.

In *Thompson v. Sacramento City Unified School Dist.* (Cal.App.3d Dist. 2003) 107 Cal.App.4th 1352) the court explained that under section 48911(c), the clear and present danger standard is a test for determining when, despite constitutional requirements or limitations that

otherwise would apply, the government can act to prevent a substantive evil from occurring. *The test requires consideration of the extent to which the evil to be prevented is substantial or serious, the probability of its occurrence*, and *the extent to which it is imminent.*

As discussed above, no "clear and present danger" existed warranting Gary's immediate suspension without his due process right to a meaningful informal conference. Assuming the "evil to be prevented" was Principal Geivett's concern with not having firearms at school, (since there is nothing to show that Geivett even engaged in this required analysis) as has already been explained, that concern was unfounded as Gary did not have "possession" of his firearms "at school" in the first place. Moreover, the shotguns had already been taken by Officer Alves so no other evil threat existed, nor did it ever.

Nor is there anything to support any "probability" that Gary having guns at school would "occur" again, let alone that the supposed evil was in any way "imminent." Gary has never brought firearms to school in the past, has never exhibited violent or otherwise dangerous behavior, candidly told Principal Geivett that he had the guns in his truck when questioned, and complied with the Principal's command that he open his truck so that Officer Alves could take the firearms. And if there were any risk that Gary was a danger to himself or others, Officer Alves arguably would have raised the possibility of behavioral interventions. No alternatives or intervention was raised or discussed. The fact that Gary was subsequently allowed to simply go back to his truck and go home without any supervision or follow-up further belies that he was in any way too dangerous to be kept in school.

Further, under subsection (d), as soon as Gary was taken back to Principal Geivett's office and suspension was raised, Gary's parents should have been contacted. Section 48911(d) states: "At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone."

Though Gary's stepfather and mother were called later that day, no attempt was made to contact them at the time that Principal Geivett immediately suspended Gary. That failure further violated Gary's procedural due process rights under the code.

In public school suspensions, due process requirements are met when notice *stating that a*

prompt meeting, if desired, will be held where the suspension may be discussed, and that a hearing, if requested, will be held within a reasonable time where the student may present informal proof of his side of the case. (*Charles S. v. Board of Education* (Cal.App.1st Dist. 1971) 20 Cal.App.3d 83, emphasis added.)

Nor were Gary's parents given any notice of any opportunity to discuss the suspension, nor ever invited by the School to do so. No requests to discuss Gary's suspension were ever made by Principal Geivett, or anyone else at Willows. Gary's mother, Ms. Susan Parisio, nonetheless went to see Principal Geivett later that same day, on her own initiative. Ms. Parisio – already sensing (even with the limited information the school provided) that the school's allegations defied logic – asked Geivett to give her all the school's policy information about what constitutes "school property." Simply put, Ms. Parisio wanted Principal Geivett to provide information that would explain why "school property" included property the school did not own. No information or documentation was provided to Ms. Parisio, nor was she told where she might obtain such information.

During this meeting, Geivett also told Ms. Parisio that there was a security tape of Interquest Canine alerting on Gary's truck.

On October 28, 2009, Ms. Parisio again initiated an appointment to speak to school authorities, this time with Superintendent Steven Olmos, about the suspension and to see if anything could be done to avoid an expulsion. Olmos said "No." He told Ms. Parisio nothing could be done; Gary would be expelled. Dr. Olmos also said the school was going to "make an example" of Gary. Ms. Parisio again asked for copies of the school's policy regarding "school property" but received no response. The meeting lasted less than three minutes.

A careful review of the procedural due process violations of Gary suffered per sections 48900.5 and 48911 et. seq. during the suspension process was particularly relevant to Gary's ability to obtain a "fair hearing" at the subsequent Expulsion Hearing because Gary's expulsion could not be supported *without the same requisite findings* under section 48915(b) that either 1) other means of correction have failed to bring about proper conduct, or that 2) the pupil's continuing presence at school presents an ongoing danger to himself and others.....§48915(b)

In other words, the School District's failure to satisfy section 48915(b), (i.e., by not properly making the "findings" required by that section), was a result of Willows' original failure to observe and comply with Gary's due process rights during the suspension process. The failure *to provide for*, and protect, Gary's due process rights at the suspension stage ultimately resulted in an unfair hearing because the School District could not be presented with any of the same factual circumstances necessary to satisfy section 48915(b)'s requirements.

Willows' failure in this regard simply prevented the record from being developed.

C. Extension of Suspension Without Notice or Consultation with Parents

On November 2, 2009, and again without being told or asked to do so by the School, Ms. Parisio initiated another meeting with Principal Geivett. During this meeting, Ms. Parisio pointed out that the suspension correspondence, dated October 26, 2009, that Geivett gave her during their last meeting on October 26, 2009, stated that Gary could return to school on November 2, 2009. Geivett then told Ms. Parisio – for the first time, and without any discussion – that Gary's suspension had been extended pending the expulsion hearing, stating simply: "Of course we have to extend the suspension until the hearing."

That Ms. Parisio was given notice of Gary's extended suspension for the first time upon initiating yet another meeting with Principal Geivett, and without being given the opportunity to discuss whether keeping Gary at Willows, or placing him in an alternative school setting was dangerous or a threat to the school's ability to educate students, was a further violation of section 48911, subsection (g). That section states:

> In a case where expulsion from any school or suspension for the balance of the semester from continuation school is being processed by the governing board, the school district superintendent or other person designated by the superintendent in writing may extend the suspension until the governing board has rendered a decision in the action. *However, an extension may be granted only if the school district superintendent or the superintendent's designee has determined, following a meeting in which the pupil and the pupil's parent or guardian are invited to participate, that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process.* If the pupil or the pupil's parent or guardian has requested a meeting to challenge the original suspension pursuant to Section 48914, the purpose of the meeting shall be to decide upon the extension of the suspension order under this section and may be held in conjunction with the initial meeting on the merits of the suspension.(§48911(g), emphasis added.)

Though Ms. Parisio was repeatedly left with no choice but to initiate meetings with Principal Geivett to discuss Gary's suspension, neither she nor Gary were ever invited to participate in a meeting to discuss whether Gary's continuing presence at Willows, or at alternative school placement would "cause a danger to persons or property or a threat of disrupting the instructional process." Indeed, Ms. Parisio had twice tried, to no avail, to challenge Gary's suspension and was dismissed.

Ms. Parisio asked how Gary would make up his tests, and was told he could take alternative tests. Asked whether Gary was supposed to take all of the tests at once, Geivett said "yes." He also said that Gary could not take the tests at an alternate location. Geivett refused to discuss anything else with her. Geivett rejected all of her educational suggestions for Gary, and provided none of his own.

Two days later, in a November 4, 2009 letter to Ms. Parisio regarding the October 26th incident, Dr. Olmos, states: "Based on the recommendation from Mort Geivett, Principal, Willows High School, I have determined that it is indeed necessary to extend Gary's suspension pending the outcome of the District's expulsion hearing. This is based upon a finding that Gary poses a continuing danger to himself or others, or a threat of disrupting the educational process." (**Exhibit M.**)

This was the first time Gary's parents heard allegations that Gary was a threat of any kind. No one had ever suggested Gary posed a danger to himself or others in the past – or even on this particular occasion, thus making the allegation of a "continuing danger " illogical, even absurd . (Not unlike suspending Gary for having firearms on "school grounds" when the school's own records show he didn't.) No documents or information were or have been provided supporting a "finding" or "determination" that Gary "poses a continuing danger to himself or others," or a "threat of disrupting the educational process" based on the October 26th incident. Nor was there any request for Gary or Ms. Parisio to meet with school officials to discuss alternatives to extending Gary's suspension prior to its inception.

Gary was suspended from October 26-November 19, 2009. During this time, he was given homework packets from teachers.

No offers to settle or make alternative arrangements were offered to Gary prior to the Expulsion Hearing. It is well-known that the Community Day School, while issuing credits, does little to further a student's education. There was no attempt to counsel Gary, offer other resources as an alternative to either the initial suspension, its subsequent extention, or to avoid expulsion.

> A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under Education Code Section 48900

(Educ. Code § 48900(v)).

That both Willows High and the School District failed to exercise its discretion to offer Gary any meaningful alternatives to suspension or expulsion is yet another example of a prejudicial abuse of discretion.

On November 12, 2009, Ms. Parisio met with Dr. Olmos. Ms. Parisio again asked about the school's policy regarding its jurisdiction and authority to search private vehicles parked off-campus and what constituted "school property." Dr. Olmos said that he was "not here to discuss the policy," but only to give Ms. Parisio a copy of the hearing packet that would be used by the school at the Expulsion Hearing. Ms. Parisio was not notified either in writing, or during the meeting that day that the school would call Officer Alves to testify at the hearing.

Willow's failure to give Gary and his mother the opportunity to meet and discuss whether Gary "posed a continuing danger to himself," or threatened to "disrupt the educational process" before his suspension was unilaterally extended, is yet another example of how Willows violations of Gary's procedural due process rights during the suspension "process" prevented Gary from obtaining a fair hearing at the Expulsion Hearing. Not allowing the opportunity to discuss and debate these issues prevented introduction of, and the availability of, the very facts needed to support the expulsion in the first place.

VI. CONCLUSION

Willows High School Principal Geivett made a series of errors based upon his misunderstanding – and in some cases, rewriting -- of the Education Code. He wrongfully suspended Gary Tudesko for an act which did not violate that Code, and wrongfully extended that

suspension through the Expulsion Hearing. In so doing, Principal Geivett violated state regulations and school policies, as well as Gary's due process rights. At the Expulsion Hearing, Principal Geivett misinformed the School District on the central fact at issue, repeatedly stating that Gary's truck was parked "on campus." Based on undisputed evidence, it was not. Principal Geivett also misinformed the School District on the central issues of law, asserting that the School District had *no discretion* in this case because Gary "possessed" firearms "on school property" in violation of Education Code sections 48900(b) and 48915(c)(1) – offenses that, according to Geivett, result in *mandatory* expulsion regardless of circumstances. He was wrong on all counts. But the School District adopted Principal Geivett's false factual assertions and his incorrect opinions on the law and expelled Gary. By expelling Gary, the School District exceeded its jurisdiction, abused its discretion, and participated in perpetrating a gross injustice upon one of its students. At the same time, it brought shame and ridicule upon Willows High School and the Willows Unified School District – for essentially expelling a young man for duck hunting.

The School Resource Officer for the Willows Unified School District, Officer Tricia Alves, and the Chief of Police, William Spears, both agree that Gary Tudesko committed no crime. (See Letter from Willows Police Chief William Spears, **Exhibit N**.) He did not violate the Penal Code by transporting his unloaded shotguns in his truck, following a morning of duck hunting. And based on the plain language of the Education Code sections regarding possessing firearms at school, and an Attorney General Opinion right on point, Gary did not "possess" firearms "at school." It was only by adopting Principal Geivett's *opinion* of what the law *should be* that the School Board was able to make the "findings" required to expel Gary Tudesko. That was a mistake that led to an absurd result.

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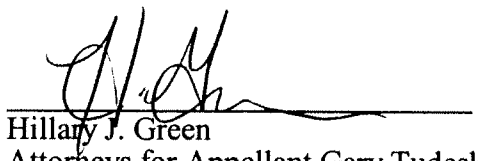
We therefore respectfully ask the members of the Glenn County Board of Education to exercise their discretion and their common sense, and mitigate the damage done, to the extent possible, by reversing the School District's expulsion order and clearing Gary Tudesko Expulsion record.

Dated: January 4, 2010

Michel & Associates, P.C.



Hillary J. Green
Attorneys for Appellant Gary Tudesko

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On January 4, 2010, I served the foregoing document(s) described as

BRIEF IN SUPPORT OF APPEAL TO GLENN COUNTY BOARD OF EDUCATION FROM WILLOWS UNIFIED SCHOOL DISTRICT EXPULSION ORDER; REQUEST FOR REVIEW DE NOVO

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Mr. Arturo Barrera, Superintendent
Glenn County Office of Education
311 S. Villa Avenue
Willows, CA 95988

Catherine Hanes, Board Member
Glenn County Office of Education
311 S. Villa Avenue
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X (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on January 4, 2010, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

___ (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

CLAUDIA AYALA