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8 BEFORE

9 THE GLENN COUNTY BOARD OF EDUCATION

10 In the Matter of

11 GARY TUDESKO,

12 Petitioner

13 v.

14 WILLOWS UNIFIED SCHOOL
15 DISTRICT,

16 Respondent.

**WILLOWS UNIFIED SCHOOL DISTRICT'S
OPPOSITION TO PETITIONER'S
EXPULSION APPEAL**

Hearing Date: January 19, 2010

17 **TO:** Petitioner and their attorney of record:

18 On November 19, 2009, the Willows Unified School District ("District") Governing
 19 Board ("Board") determined that there was substantial evidence to conclude that Petitioner, Gary
 20 Tudesko ("Gary/Student/Petitioner") violated Education Code sections 48900, subdivision (b)
 21 and 48915, subdivision (c)(1). The Governing Board ultimately ordered that Gary be expelled
 22 from all schools and programs of the District for the remainder of the winter semester and the
 23 balance of the next semester through the end of the 2009-10 school year. (See Notice of
 24 Expulsion Hearing Order From Governing Board, November 20, 2009.) The Board also ordered
 25 that Gary be readmitted in the fall semester of the 2010-11 school year under a conditional
 26 suspended expulsion through November 19, 2010. (Id.) During the term of Gary's expulsion the
 27 Board has ordered that he continue to receive educational support services at the Community Day
 28

1 School. Finally, the Board ordered that Gary follow the term of a Readmission Plan.

2 On December 17, 2009, the Glenn County Office of Education ("GCOE"), apparently
3 acting on behalf of the Glenn County Board of Education ("GCBE"), sent a notice of expulsion
4 appeal setting the hearing for this matter on January 15, 2010, without first providing any other
5 notice to the District in this matter. Further, in its notice of expulsion hearing appeal, GCOE
6 notified the District that all parties must submit "paperwork" to its office by January 5, 2010. The
7 District has fully complied with this request. A briefing schedule in this matter has not been
8 ordered. Accordingly, the following pleading is the District's opposition brief opposing Student's
9 expulsion appeal in this matter.

10 **I. STATEMENT OF FACTS**

11 The following facts were presented at the District Governing Board's Due Process
12 Hearing ("Hearing") by testimony and/or documentary evidence.

13 Sometime in the early morning on October 26, 2009, Gary went duck hunting locally with
14 a group of family friends. Following his duck hunting trip, on that same morning, rather than
15 going home, Gary chose to drive straight to school with shotguns and shotgun shells still in his
16 truck. While Gary stated that he knew he should have gone home, he decided to drive to school.
17 Gary parked his truck in the same location where he always parked his truck when he attended
18 school -- right next to the Willows High School tennis courts. Gary was quite familiar with this
19 parking spot as evidenced by his decision (on October 23, 2009) to irresponsibly park his truck up
20 in the oleander bushes which sat next to the Willows High School tennis courts.

21 At 9:15 a.m. on October 26, 2009, while Gary was in class on the High School campus,
22 Mort Geivett, Principal for the Willows High School, was informed during a routine canine
23 sweep by Interquest Canine Unit, one of the private agencies the District contracts with, that one
24 of their dogs alerted on a truck located in the campus parking areas. (Hearing Transcript ("HT"),
25 p. 12.) Mr. Geivett immediately contacted the School's Resource Officer, Tricia Alves, who
26 subsequently ran a plate search on the identified vehicle located on campus. (Id.) Officer Alves
27 confirmed that the truck located in a student parking area on the Willows High School campus
28 belonged to Gary. (Id.) Because of the obvious seriousness of the matter and the clear threat to

1 the safety of the children on the campus, Mr. Geivett summoned Officer Alves to the High School
2 and requested that she meet Mr. Geivett at the location where the canine had alerted on Gary's
3 truck. (HT, p. 12-13) Mr. Geivett then contacted Gary who was in class and asked that he
4 accompany the administration to his truck. (HT, p. 13.) On their short walk from Gary's class to
5 his truck, Mr. Geivett asked Gary if he had something in his truck that he should not have on
6 campus. Understanding the question, Gary told Mr. Geivett that he had two shotguns and
7 shotgun shells in his truck. (HT, p. 13.) Mr. Geivett then informed Gary that possession of
8 weapons on or near a school campus is not only a suspendable offense, but also an expellable one.
9 (Id.) During the search of Gary's truck, which he consented to, two shotguns and shotgun shells
10 were indeed found in Gary's truck. (Id.) Due to the safety risk posed by the shotguns in Gary's
11 truck to the students on campus, Officer Alves confiscated the weapons and ammunition and took
12 them into police custody. (HT, p. 13, 32-33.)

13 Following Officer Alves' confiscation of the shotguns and shotgun shells, Gary was
14 brought to the High School Office and informed that he was in violation of Education Code
15 section 48900, subdivision (b). The school site administration contacted Gary's stepfather and
16 immediately suspended Gary for five days. (HT, p. 13.) The District administration met with
17 Ms. Parisio, Gary's mother, on that same date, informing her of the charges and the suspension
18 and possible expulsion. (Id.) While not specifically established at Hearing, Dr. Olmos met with
19 Ms. Parisio beginning October 28, 2009 through November 12, 2009, wherein she was again
20 informed of Gary's rights and the extension of Gary's suspension pending the expulsion hearing.

21 On October 26, 2009, the school site administration sent Gary's parents a notice of
22 suspension and recommendation for expulsion for their son's actions of being in possession of the
23 shotguns and shotgun shells on school grounds (See Expulsion Referral, October 26, 2009. P. 5-7,
24 Expulsion Packet.)

25 On November 6, 2009, 9 school days from the date of the shotgun incident, the District
26 administration sent Ms. Parisio a Notice of Expulsion Hearing, identifying that Gary was being
27 charged with the specific charges of: Education Code section 48900, subdivision (b), possession
28 of a firearm or dangerous object; and Education Code section 48915, subdivision (c)(1),

1 possession or otherwise furnishing a firearm. (See Notice of Expulsion Hearing, November 6,
2 2009, p. 1.) The facts substantiating the charges were presented in the Notice of Expulsion
3 Hearing to the Student and his Family. (Id. at p. 1.) Further, in this Notice of Expulsion Hearing
4 letter from Dr. Olmos, Ms. Parisio was reminded that she had met with the Superintendent to
5 discuss these charges. (Id.) Moreover, contained within this Notice of Expulsion Hearing was all
6 of the requisite information as required by Education Code section 48918 regarding Gary's
7 procedural student rights for the upcoming expulsion hearing. (Id.) Of note, among others, Gary
8 was informed that technical rules of evidence did not apply at the hearing. (Id.) Gary's
9 suspension was extended pending the expulsion hearing. (Id.)

10 The Hearing itself was held on November 19, 2009. (HT, p. 1.) Gary appeared at the
11 Hearing with his Mother, Ms. Parisio, and Gary testifying and presenting evidence.

12 Throughout the course of the hearing, multiple examples and factual grounds were
13 presented which showed that the District had made multiple attempts to change and/or correct
14 Gary's inappropriate behaviors to no avail. The evidence also showed that Gary has a propensity
15 to act out and to defy school authority and school rules.

16 During the course of the Hearing, evidence was admitted which showed that Gary was
17 suspended for 1 day on Friday, October 23, 2009, that is, one school day prior to being found in
18 possession of shotguns and shotgun shells in his truck. (Expulsion Packet, p. 24.) Of note, on
19 October 23, 2009, Gary was suspended for parking his truck across the sidewalk and into the
20 oleander bushes near the tennis courts. (Id.) On his first date back from his suspension, Gary
21 chose to drive to school with two shotguns and shotgun shells in his truck.

22 Gary was also suspended from school for four days beginning March 13, 2009, for using
23 inappropriate language multiple times, as well as making a hate statement to another student.
24 (HT, p. 25 of 57; Expulsion Packet p. 25 of 57.) Specifically, when Gary was told by a teacher's
25 assistant that he was indeed tagged in a game during PE, he responded "shut up you F'ing
26 Mexican, you stupid Mexican." (HT, p. 21-22; Expulsion Packet, p. 27 of 57.)

27 Prior to this suspension, Gary had multiple student code of conduct violations and
28 disregard for school rules. During the course of the Hearing, these prior violations and the

1 District's proscribed corrective actions were exhaustively covered:

- 2 - September 28, 2009, texting in class, detention;
- 3 - September 11, 2009, disruption of class, assigned detention;
- 4 - June 1, 2009, left class to use restroom, wrote on final exam "Mrs. Conklin is a
5 bitch;"
- 6 - May 22, 2009, repeated arguments with teacher, refusal to follow directions,
7 detention;
- 8 - April 23, 2009, collided with another student during a game, and then proceeded to
9 wrap his arms around the student's throat, pick him up, throw him on the ground,
10 with the other student suffering a cut on his face, detention;
- 11 - March 10, 2009, Ms. Lundgren asked Gary to get a soccer ball that he kicked under
12 the bleachers, his response was to yell at the teacher saying, "I didn't f-ing do it, so
13 I'm not going to get it," Saturday school;
- 14 - March 5, 2009, profane language at another student, detention;
- 15 - March 2, 2009, use of the "F-Bomb" in class on numerous occasions and refusing to
16 do work, left class early without doing work while stating he would rather get a
17 referral, detention;
- 18 - February 5, 2009, Didn't have a book, refusal to do work, refusal to get textbook,
19 detention;
- 20 - November 12, 2008, refusal to work, detention;
- 21 - October 14, 2008, messing around, pushing and shoving with another student while
22 outside, threw a stick at a different student, detention;
- 23 - May 30, 2008, disrupted the movie, To Kill a Mockingbird, making racial slurs, kept
24 repeatedly saying the "N" word, Saturday school;
- 25 - May 20, 2008, called Ms. Samons a bitch, was given detention, four days of
26 detention;
- 27 - May 5, 2008, excessive talking in class, detention;
- 28 - April 16, 2008, disruption of class several times regarding story then spit in garbage

- 1 can after clearing his throat in loud fashion, detention;
- 2 - January 22, 2008, after being reminded of a new semester, new start, continued to talk
- 3 with another student rather than remaining attentive and work, detention;
- 4 - January 10, 2008, excessive talking during instruction, detention;
- 5 - December 17, 2007, despite being put on contract, Gary could not find minimal
- 6 amount of maturity to sit quietly and listen to both instructions and explanation of an
- 7 activity, detention and work detail have not worked, Saturday School;
- 8 - November 30, 2007, disruptive behavior in class, word detail;
- 9 - November 7, 2007, constantly talking in class, caught cheating on quiz, talked to
- 10 many times about talking in class, detention;
- 11 - September 25, 2007, disruption of class, two days in a row, Mother called, Gary has
- 12 not decided whether he will change his behaviors or not, detention;
- 13 - September 24, 2007, disruptions in calls on multiple occasions, detention;
- 14 - September 13, 2007, Gary cannot keep his hands to himself, hitting other students,
- 15 detention;
- 16 - September 6, 2007, talking during testing after repeated warnings, work detail. (See
- 17 Expulsion Hearing Packet, Far Superior Copy of Packet's Content Contained in
- 18 District's Expulsion Packet (As opposed to Petitioner's) previously provided to the
- 19 Glenn County Board of Education, p. 19-51.)

20 Mr. Geivett, Principal for the High School, testified throughout the hearing both during

21 the school site's presentation of the case, and as a witness called by Gary's Parent. Mr. Geivett

22 testified that the school has made repeated attempts to curb Gary's behaviors and these have

23 failed. Mr. Geivett testified that Gary admitted to being in possession of the shotguns and

24 shotgun shells and admitted that he knew he should not be in possession of these items on school

25 grounds. Mr. Geivett also testified that that the shotguns and shotgun shells were found in Gary's

26 truck on the High School Campus.

27 Officer Alves testified at the expulsion hearing as well. Officer Alves testified that Gary

28 was in possession of shotguns and shotgun shells in his truck on campus. Officer Alves also

1 testified that she took the guns into possession due to the danger presented to the High School
2 students on the campus. Finally, Officer Alves testified that Gary's possession of the shotguns
3 and shotgun shells on campus were a violation of the law.

4 Ms. Parisio, Gary's Mother, testified during the course of the hearing. Ms. Parisio
5 conceded in her testimony that Gary was in possession of shotguns and shotgun shells in his
6 truck.

7 Gary himself testified during the hearing. He did not apologize for his actions of being in
8 possession of shotguns or shotgun shells in his truck on school grounds. Further, he did not
9 apologize for his past student code of conduct violations as exhaustively covered at Hearing and
10 as described above. What Gary did state was that he knew that he should have gone home first to
11 drop off the shotguns and shotgun shells prior to coming to school, following his duck hunting
12 earlier that morning on October 26, 2009.

13 Based upon the evidence presented and the testimony from the witnesses, the Board
14 concluded that Gary was in possession of shotguns and shotgun shells in his truck on campus.
15 For these reasons, on November 20, 2009, the Board ordered that Gary had violated Education
16 Code sections 48900, subdivision (b) and 48915, subdivision (c)(1). The Board recommended
17 that Gary be expelled for the balance of the winter semester and the following semester for the
18 remainder of the 2009-10 school year. While the Board was required by law to expel Gary for
19 one calendar year, that is, until November 19, 2010, per Education Code section 48916,
20 subdivision (a), it permitted Gary's earlier readmission on a case-by-case basis, beginning in the
21 fall semester 2010. (See Notice of Expulsion Order.) The Board also outlined a rehabilitation
22 plan for Gary to follow which is a condition for his readmission in the fall 2010. (Id.) In the
23 November 20, 2009 Expulsion Hearing Order, Gary was informed that he was to attend the
24 Community Day School immediately. (Id.)

25 **II. ALLEGED GROUNDS FOR REVERSAL OF EXPULSION**

26 Gary submitted an Expulsion Appeal Request Form, which was apparently received by the
27 Glenn County Office of Education on December 16, 2009. It was not until the Winter Holiday,
28 on December 23, 2009, that the District or this office received this notice of expulsion appeal

1 request form from the Student's legal counsel. Without providing the specific Education Code
2 Violation notations at all, and without providing an explanation for his asserted grounds for an
3 appeal, the Request for Appeal states that the Student is appealing the expulsion order from the
4 District Board on the grounds that there was no substantial evidence of: possession (undescribed)
5 on school grounds; other means of correction are not feasible or have repeatedly failed to bring
6 about proper conduct due to the nature of the act, presence of pupil causes a continuing danger.
7 (See Student's Expulsion Appeal Form.) Again, without providing any statutory guidance,
8 Student also stated that the appeal was based upon a violation of due process regarding the notice
9 of charges; specific facts upon which alleged violation based; and hearing notice issues. (Id.)
10 Moreover, in his Appeal Form Student states that the decision is not supported by substantial
11 evidence; mistake of law; alternatives to expulsion; and failure to seek probative factual and legal
12 support.

13 On December 17, 2009, GCOE sent a notice of expulsion appeal hearing which set the
14 expulsion appeal hearing in this matter for January 15, 2010. The Parties were never provided
15 with a briefing schedule in this matter. On January 6, 2010, the District and this office received a
16 copy of Student's Brief in Support of Student's Expulsion Appeal. Student's Brief greatly
17 expands upon the initial Appeal Form sent to the District and this office on December 23, 2009.

18 **III. ARGUMENT**

19 **A. The Decision to Expel Gary Tudesko was Based on Substantial Evidence**

20 Education Code section 48918, subdivision (h), provides that "[a] decision of the
21 governing board to expel shall be supported by substantial evidence showing that the pupil
22 committed any of the acts enumerated in Section 48900."

23 Gary argues that the Hearing was unfair because the District failed to introduce substantial
24 evidence to support any of the Education Code violations charged. In a nutshell, the Student's
25 counsel misses the mark by making hyper-technical legal arguments that insufficient evidence
26 was produced at the Hearing. These arguments are grossly misleading and false.

27 "Substantial evidence" is evidence reasonable minds accept as adequate to support a
28 conclusion, even if it is possible to draw two inconsistent conclusions from the evidence. (U.S.

1 ex. Rel. Hopper v. Anton (9th Cir. 1996) 91 F.3d 1261, cert. den. (1997) 117 S.Ct. 958; see also,
2 Gallup v. Board of Trustees (1996) 41 Cal.App. 4th 1571 [Court of Appeal found that “substantial
3 evidence” requires relevant evidence that a reasonable mind might accept as adequate to support a
4 conclusion].) Education Code section 48918, subdivision (h), further provides that “technical
5 rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given
6 probative effect only if it is the kind of evidence upon which reasonable persons are accustomed
7 to rely in the conduct of serious affairs.”

8 As discussed above, evidence presented to the District Board far exceeded the “substantial
9 evidence” threshold. As stated in the District Board’s Findings of Fact, there was substantial
10 evidence to conclude that Gary violated the applicable Education Code sections as charges in the
11 Notice of Expulsion in this case. Based upon the testimony of Mr. Geivett, Ms. Parisio, Gary,
12 and Officer Alves, it was reasonable for the Board to determine that Gary knowingly drove his
13 truck to school, parked his truck on campus, walked to class, while leaving two shotguns and
14 shotgun shells in his truck in violation of Education Code section 48900, subdivision (b), and
15 section 48915, subdivision (c)(1).

16 Moreover, Student and his Mother testified and admitted to Gary being in possession of
17 shotguns and shotgun shells in his truck, with Gary admitting to taking the guns to school. To be
18 sure, their own words at the Hearing are simple to understand:

19 THE STUDENT: I shouldn’t have taken the guns to school and didn’t want to be late.

20 (HT, p. 91.)

21 MS. PARISIO: Mr. Geivett mentioned and has in the past, and not just in opening
22 statement, that the facts substantiate the seriousness of this, this offense in that he had a shotgun
23 in his pickup. He did.

24 (HT, p. 16.)

25 B. Gary was Afforded a Fair Hearing Before the Board

26 Under Education Code section 48922, subdivision (a)(2), one of the elements the County
27 Board of Education must review is whether there was a fair hearing before the Board. In order to
28 determine whether the District afforded Gary a fair hearing, GCBE must determine whether the

1 District met the expulsion procedures under Education Code sections 48918 and 49198.5.

2 Contrary to every argument asserted by Student's counsel, Gary was afforded a fair
3 hearing as prescribed under Education Code section 48918 and 48918.5. Gary received proper
4 notice of the expulsion Hearing as required under Education Code section 48918, subdivision (b).
5 The Notice of Expulsion clearly stated what the charges were and provided the factual grounds
6 upon which these charges were based. Gary's counsel misleadingly states: "the notice the school
7 provide [sic.] to Gary and his parents fell far short of these requirements." Each and every notice
8 requirement as stated in the Education Code was provided to Gary and his Parents in the Notice
9 of Expulsion Hearing.

10 Further, during the course of the Hearing, Gary was afforded his due process rights as
11 required by the Education Code. That is, Gary was given the opportunity to: make both an
12 opening and closing statement, question witnesses and evidence presented, and answer questions
13 from the Board.

14 Student's counsel makes the (once again) misleading argument that the District
15 improperly relied upon hearsay evidence at the Hearing. First, as stated in the Education Code,
16 hearsay evidence is permitted during an expulsion hearing. (See Education Code section 48918,
17 subdivision (f).) The limiting factor on this rule is that "no evidence shall be based solely upon
18 hearsay evidence." (Id.) Hearsay evidence was not solely relied upon to prove the fact that Gary
19 was in possession of shotguns in his truck along with shotgun shells on school grounds. Rather, it
20 was through percipient witness testimony, that is the testimony of eye witnesses that proved that
21 Gary possessed the shotguns and shotgun shells on school grounds. Problematic for Gary's
22 argument here is that he admitted himself to being in possession of the shotguns and shotgun
23 shells at school.

24 Finally, in what can only appear to be another attempt to mislead GCBE, Student's
25 counsel states that there was improper conduct during and after the closed session deliberation.
26 Per Education Code section 48918, subdivision (c), the Board was permitted to convene into
27 closed session from open session in order to deliberate on the expulsion recommendation from
28 the school site and to consider the evidence presented. Without any evidence supporting his

1 claim, Gary states that Mr. Geivett participated in the closed session deliberations. This is simply
2 not true and a false statement. The fact that this clearly misleading false statement was made
3 without sufficient proof for its support brings into doubt many of the allegations and arguments
4 brought in Student's expulsion appeal.

5 The Student's counsel also misleadingly states that the District did not somehow provide
6 Gary with a fair hearing because, after convening from closed session the Board did not record
7 the Board's recommendation for expulsion. Simply put, this is not the requirement under the
8 Education Code. Rather, under Education Code section 48918, subdivision (g), the requirement
9 is that "a record of the hearing shall be made." The Board's reporting out from closed session is
10 not a matter that requires a recorded record. In fact, on the date that the expulsion hearing took
11 place the Board was not required to immediately report out of closed session and state what their
12 ruling was. That is, under Education Code section, 48918, subdivision (a), it states (in part):
13 "Within 10 school days after the conclusion of the hearing, the governing board shall decide
14 whether to expel the pupil, unless the pupil requests in writing that the decision be postponed...."
15 Here, the District Board conducted the Hearing, and recorded the Hearing in its entirety. The
16 District Board fully complied with the 10 day timeline requirement under Education Code section
17 48918, subdivision (a), by first reporting in open session what its expulsion order was, and by
18 secondly sending the Student their Notice of Expulsion Hearing Order on November 20, 2009,
19 which contained the District Board's Findings of Fact, Order, and Rehabilitation Plan for Gary.
20 No procedural grounds were violated here.

21 C. The Decision to Expel was Not a Prejudicial Abuse of Discretion

22 An abuse of discretion can be found if the District failed to meet procedural requirements
23 when holding the expulsion hearing, made findings not supported by the evidence, or made a
24 decision to expel not supported by the required findings (Education Code section 48922,
25 subdivision (c)(1), (2), and (3).) An abuse of discretion is prejudicial if, in the absence of the
26 error, a different result would have occurred. As stated in Education Code section 48922:

27 A county board of education may not reverse the decision of a governing board to
28 expel a pupil based upon a finding of an abuse of discretion unless the county

1 board of education also determined that the abuse of discretion was prejudicial.

2 Gary argues that the District abused its discretion during the course of the Hearing.
3 Specifically, Student's counsel argues that the District abused its discretion by adopting testimony
4 that was "riddled" with false statements of fact and law in its expulsion order.

5 Student's arguments fall short of explaining how the District abused its discretion. First,
6 the District Board gave the Student and his representatives opportunities to make both opening
7 and closing statements at the Hearing. At the beginning of the Hearing, Gary was provided with
8 the opportunity to provide an opening statement, and in fact, Ms. Parisio made an opening
9 statement. Next, throughout the Hearing, Gary and his Mother were given multiple opportunities
10 to clarify the record, conduct examinations of witnesses, present evidence, to provide an account
11 of the incident, and to question the expulsion hearing procedure itself. Additionally, at the close
12 of the Hearing, the Student was permitted to make a closing statement. The Student was given
13 every opportunity to provide evidence and call witnesses at the Hearing.

14 D. The Board Did Not Act Without Or In Excess Of Its Jurisdiction

15 Contrary to Student's arguments, the Governing Board did not act without or in excess of
16 its jurisdiction in this matter. Under Education Code section 48922, subdivision (a)(1), it
17 provides that the Board has acted without or in excess of its jurisdiction when the following
18 occurs in a "situation where an expulsion hearing is not commenced within the time periods
19 prescribed by this article, a situation where an expulsion order is not based on acts enumerated in
20 Section 48900, or a situation involving acts not involving acts not related to school activity or
21 attendance." In this regard, Student's counsel argues that he was not in possession of a firearm,
22 that this firearm was not possessed at school, and that the District lacked the jurisdictional
23 grounds to discipline Gary here. These arguments illustrate a misunderstanding of the Education
24 Code and the standards under which student code of conduct rules are governed by school
25 districts.

26 First, from the evidence presented at Hearing, as discussed above, it cannot be refuted that
27 Gary possessed two shotguns and shotgun shells in his truck. As stated before, multiple eye
28 witnesses accounted for this possession, including the Student himself.

1 Second, from the evidence presented at Hearing, as discussed above, Gary's truck was
2 parked on school grounds immediately next to the high school tennis courts.

3 Third, the District had the requisite jurisdiction as required by the Education Code to
4 assert discipline over Gary in this matter. To be sure, under Education Code section 48900,
5 subdivision (s), the statutory application of the jurisdictional element of *in loco parentis* is
6 applied. Education Code section 48900, subdivision (s) states that:

7 A pupil may be suspended or expelled for acts that are enumerated in this section
8 and related to school activity or attendance that occur at any time, including, but
9 not limited to any of the following: (1) While on school grounds; (2) While going
10 to or coming from school; (3) During the lunch period whether on or off the
11 campus; and (4) During or while going to or coming from, a school sponsored
12 activity.

13 The record establishes that Gary was in possession of two shotguns in his truck on school
14 grounds, which clearly establishes jurisdiction in this matter, and permits the Districts
15 interventions. That being said, even if Gary was not in possession of two shotguns on school
16 grounds, he was clearly in possession of shotguns while going to or coming from school, and was
17 related to his school attendance. To be sure, Gary's act of driving to school was related to the
18 school activity of attending class that day. What is more, the firearms were discovered in Gary's
19 truck while he was in class at school at the High School and under the care custody and control of
20 the High School. Mr. Geivett testified at hearing that Parents give this *in loco parentis* right to
21 the District when they have their child attend school. (HT, p. 58)

22 In one of the most recent cases regarding free speech and jurisdiction, *Morse v. Frederick*
23 (2007) 551 U.S. 393, the United States Supreme Court heard arguments from the likes of the
24 ACLU, representing the Student, and Kenneth Starr, whom represented the school district. *Morse*
25 *v. Frederick*, also known as the "Bong Hits 4 Jesus case", is quite instructive for us in this matter,
26 especially in light of the fact that Student's counsel is arguing that the District did not have
27 jurisdiction to discipline Gary for being in possession of a firearm on campus, because, Gary was
28 not on campus. In the *Bong Hits 4 Jesus* case, while off campus, on the sidewalk across the street

1 from the high school, during school hours, in a winter Olympics torch rally event loosely
2 sponsored by the high school site, a student and his friends unfurled a banner which read: "Bong
3 Hits 4 Jesus," while the torch passed through town (Morse v. Frederick (2007) 551 U.S. 393).
4 The District suspended the Student who unfurled the banner. The Student appealed the case all
5 the way to the United States Supreme Court who ruled, in favor of the District, that, not only did
6 they have jurisdiction, but that it had the grounds to discipline the Student as he was advocating
7 for the illegal use of drugs. In the U.S. Supreme Court case, the District had jurisdiction to
8 discipline a student during school hours, where the student simply opened a banner in a non-
9 violent manner, off of the campus during school hours. However, here, Gary argues that his
10 possession of two shotguns and shotgun shells on school grounds (or at the least on the street
11 immediately adjacent to the high school tennis courts) does not fall under the same jurisdictional
12 umbrella. The jurisdictional umbrella is far too broad under the Education Code not to include
13 Gary and his actions in this matter. Accordingly, the District had the authority to discipline Gary
14 and it acted within its authority and jurisdiction when expelling him until the fall 2010 semester.

15 E. The District Did Not Err In Finding That The Dual Findings Requirements Were Met
16 In This Matter.

17 Under Education Code section 48915, subdivision (c)(1), which is the same iteration of
18 Education Code section 48900, subdivision (b), the principal shall immediately suspend a pupil
19 and recommend their expulsion if it is determined that the Student was in possession of a firearm.
20 Education Code section 48915, subdivision (c)(1), is a mandatory expellable offense under the
21 Education Code which does not require the dual findings requirements as outlined under either
22 Education Code sections 48915, subdivision (b)(1) and (2), or subdivision (e)(1) and (2). On
23 these grounds, and from what was proven at Hearing as established by the District Board's
24 Findings of Fact, Order, and Rehabilitation Plan, the District Board was not required to make dual
25 findings. That being said, the District Board was in no way prevented from making dual findings
26 through the expulsion hearing process. This is because, under Education Code section 48915,
27 subdivision (b)(1) and (2), it provides that a decision to expel under section 48900, subdivision
28 (b), shall be based upon one or both of the following: "(1) Other means of correction are not

1 feasible or have repeatedly failed to bring about proper conduct. (2) Due to the nature of the act,
2 the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.”
3 In the District Board’s Findings of Fact it established the requisite dual findings after establishing
4 its findings of fact. Specifically the District Board stated: “Gary has a history of defying school
5 authority and/or violating school rules and/or violating the student code of conduct. Other means
6 of correction are not feasible or have repeatedly failed to bring about proper conduct. Other
7 investigations such as work detail, detentions, and Saturday schools have been made for Gary and
8 has not corrected his actions.” (Notice of Expulsion Order.) As stated above, the school site
9 administration spent a great deal of time exhaustively presenting, on the record, how it had
10 attempted to curb Gary’s inappropriate behaviors, to no avail. Board Member Susan
11 Domenighini’s statement during the Hearing is quite instructive in this regard: “We had a nice
12 long reading of your record into the public document. This included cussing at teachers, calling
13 them things, inappropriate names, it includes racial slurs, includes talking and disrupting classes,
14 refusing to work.” (HT, p. 89.)

15 For these reasons, the District established that the dual findings requirements (though not
16 required to be proven in this Hearing) were indeed met.

17 F. Gary’s 4th Amendment Rights Were Not Violated In This Matter.

18 Student argues that the District improperly based its expulsion recommendation on an
19 improper search of Gary’s vehicle. Gary’s argument assumes and is predicated on the argument
20 that an impermissible search occurred, which is not true, both factually, and legally.

21 The United States Supreme Court has held that exposing a traveler’s luggage, which was
22 located in a public space, to a trained narcotics detection dog for sniffing purposes, did not
23 constitute a “search” for Fourth Amendment purposes. (See *US. V. Place*, 462 U.S. 696, 707
24 (1983).) Canines may be used to detect drugs or other contraband on school grounds, at or
25 around lockers, and student automobiles whether on or off campus, or adjacent thereto. In *Horton*
26 *v. Goose Creek Independent School District*, the Fifth Circuit Court of Appeals stated that there is
27 indeed a distinction between the use of canines with regard to lockers and automobiles on the one
28 hand, and the student’s person on the other. (See *Horton v. Goose Creek ISD* (5th Cir. 1982) (690

1 F.2d 470.) With regard to lockers and automobiles, the Court held that dog sniffing of student's
2 lockers in public school hallways and automobiles parked in public school parking lots does not
3 constitute a search under the 4th Amendment, and therefore is not unconstitutional.

4 Further, The U.S. Supreme Court has held that reasonable suspicion must exist before a
5 student may be searched on school grounds. In New Jersey v. T.L.O., the United States Supreme
6 Court held that school officials do not need probable cause to search a student, rather, the legality
7 of a search of a student should depend upon simply the reasonableness, under all the
8 circumstances of the search, that is reasonable suspicion. (See New Jersey v. T.L.O (1985) 469
9 U.S. 325.) Further, the Court held that administrators do not need a warrant to conduct a student
10 search.

11 Here, the District was permitted to review the items in Gary's vehicle. Gary admitted to
12 possessing the two shotguns and shotgun shells. Further, Gary consented to the search and the
13 search confirmed his admission to the possession. The District had the requisite degree of
14 reasonable suspicion to review the contents of the vehicle.

15 **IV. CONCLUSION**

16 Substantial evidence in the record supports the District Board's decision to expel Gary.
17 Therefore, the District Board did not violate Gary's rights as prescribed under the Education
18 Code. For the foregoing reasons, the District respectfully requests that the District Board's
19 decision to expel Gary be AFFIRMED.

20
21 Respectfully submitted,

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23 DATED: 01/14/2010

MATTHEW JUHL-DARLINGTON
ATTORNEY AT LAW

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26 By: Matthew Juhl-Darlington
27 MATTHEW JUHL-DARLINGTON
28 Attorney for Respondent

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY BUTTE) ss.

I am employed in the County of Butte, State of California. I am over the age of 18 and not a party to the within action; my business address is: 555 Main Street, Ste. 210, Chico, California, 95928.

On the date set forth below I served the foregoing document described as WILLOWS UNIFIED SCHOOL DISTRICT'S OPPOSITION TO PETITIONER'S EXPULSION ORDER on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Chuck Michel, Esq.
Attorney for Petitioner
180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802
[Facsimile: (562) 216-4445]

Roy Combs, Esq.
Attorney for Glenn County Board of Education
70 Washington Street
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Oakland, CA 94607-3795
[Facsimile: (510) 550-8211]

Steve Olmos, Ed.D.
Superintendent
Willows Unified School District
334 West Sycamore Street
Willows, CA 95988
[Facsimile: (530) 934-6609]

Mort Geivett
Principal for Willows High School
203 North Murdock Avenue
Willows, CA 95988-2793
[Via Email Only]

(VIA U.S. MAIL) I caused such document to be placed in the U.S. Mail at Chico, California with postage thereon fully prepaid.

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(VIA FACSIMILE) I caused such document to be transmitted via facsimile to the addressee from the facsimile machine of Matt Juhl-Darlington, Attorney at Law whose phone number is (530) 343-3383. The transmission by facsimile was reported as complete and without error.

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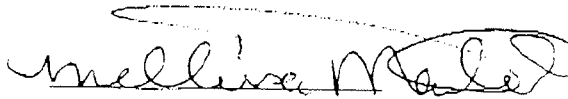
(VIA OVERNIGHT MAIL) I caused such envelope to be deposited at an authorized "drop off" box on that same day with delivery fees fully provided for at 1722 Mangrove Avenue, Suite 10, Chico, California 95926, in the ordinary course of business.

(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 a member of the bar of this court at whose direction this service was made.

Executed on January 14, 2010 at Chico, California.

Melissa Martindale



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TO: Chuck Michel, Esq. FAX. (562) 216-4445
CC: Roy Combs, Esq. FAX. (510) 550-8211
CC: Steve Olmos, Ed.D. FAX. (530) 934-6609

FROM: Matt Juhl-Darlington FAX. (530) 924-4784

DATE: January 14, 2010

RE: *Gary Tudesko v. Willows USD*, District's Opposition to Petitioner's Expulsion Appeal

TOTAL PAGES (INCLUDING COVER): 19

REMARKS: Please see attached. Thank you.

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If there are transmission problems, please call Matt Juhl-Darlington at (530) 343-3334

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