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IN THE SUPREME COURT FOR THE STATE OF  
WASHINGTON

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M.G., by and with his Guardian ad Litem. Priscilla G.,  
Appellants,

v.

Yakima School District No. 7, a municipal corporation,  
Respondent.

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BRIEF OF AMICUS CURIAE

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## I. INTRODUCTION

Education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society...it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. 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. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

*Brown v. Board of Education of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 493, 74 S. Ct. 686, 691, 98 L. Ed. 873 (1954), supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955).

In 1954, the Supreme Court of the United States declared that education, a core component of our democratic society and paramount to a child's success in life, must be provided "to all on equal terms." *Id.* Public education, despite being an integral piece of the functioning and successful continuation of our society, has been, largely, left to individual state and local governments to carry out.<sup>1</sup> The Washington Constitution has one of the nation's most protective and expansive education provisions protecting students in the public school system.<sup>2</sup>

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<sup>1</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d. 16 (1973) (holding that there is no fundamental right to an education in the United States Constitution).

<sup>2</sup> See, e.g., *50-State Review*, Education Commission of the States (March 2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf> (outlining each state's constitutional education provision and how those provisions impact funding for education).

This case is about a 14-year-old Latino child who was suspended for 12 days and then barred from returning to his neighborhood school. M.G.’s time-out-of-school totaled over four years—the entirety of his high school experience. *M.G. v. Yakima Sch. Dist. No. 7*, 24 Wn. App. 2d. 1041, 2022 WL 17420566 (Dec. 6, 2022) (unpublished). M.G. was accused of gang-related activity, specifically that he unzipped his coat and showed another child a red t-shirt and the Yakima School District previously placed him on a “gang” contract. The Yakima School District (District) deemed M.G. to be such a severe safety concern that, at the beginning of his high school tenure, the District barred him from ever attending his neighborhood school. *Id.* at 4. Essentially, M.G. was given a *de facto* expulsion because—although the District knew he did not have meaningful access to the internet—the only form of an education the District offered M.G. was an online program. The District’s decision to place M.G. on an indefinite suspension, bar him from his neighborhood school, and offer him online classes he could not

meaningfully access violated his constitutional right to receive an education as outlined by Article IX, Section 1 and is not supported by legal precedence or current education guidance.

## **II. ARGUMENT**

### **A. M.G.'s Forced Placement in an Indefinite Online Program He Could Not Access Violated his Article IX, Section 1 Right to Education**

Article IX, Section 1 of the Washington Constitution, and state education statutes, outline the State's role in providing an education to all students, providing robust protections to all students. The District violated M.G.'s constitutional right to an education by forcing him into an online program he could not meaningfully access while also barring him from his neighborhood school.

#### **1. Article IX, Section 1 of the Washington Constitution Ensures All Students Receive a Robust Education in Washington**

The Washington Constitution declares “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without

distinction or preference on account of race, color, caste, or sex.” Const. art IX, § 1. The use of the word “paramount” emphasizes that it is the state’s highest, most important duty to provide a system of public education for all students. *Basic Education Rights and Opportunities in Public Schools*, Washington State Governor’s Office of the Education Ombuds (January 2015), [https://www.oec.wa.gov/sites/default/files/public/manual\\_basic\\_education\\_rights.pdf](https://www.oec.wa.gov/sites/default/files/public/manual_basic_education_rights.pdf) at 7. Though other state constitutions encourage the respective states to provide education, Washington’s promise of an education to all students is “[c]learly...unique among state constitutions.” *Seattle Sch. Dist. No. 1, of King County v. State*, 90 Wn.2d 476, 498, 585 P.2d 71 (1978).

Legal precedence examining Article IX, Section 1 has historically focused on ensuring that the State and localities provide the necessary funding to provide education “of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” *See, e.g.,*

*Seattle Sch. Dist. No. 1*, 90 Wn.2d at 585; *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). While funding is a key component of the State’s Article IX, Section 1 duties, this Court has acknowledged that the State’s responsibility to “‘make ample provision for the education of all (resident) children’ would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.” *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 518.<sup>3</sup>

To ensure that children in Washington receive the robust education envisioned by the framers of the Washington Constitution, the Legislature created a detailed series of statutes outlining exactly what a Washington education entails.<sup>4</sup> The

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<sup>3</sup> This Court has also been explicit that “[t]he ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary.” *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 496.

<sup>4</sup> To achieve the goal of ensuring children have access to an education defined by Article IX, the judiciary “construe[s] and interpret[s] the word ‘education’ by providing broad constitutional guidelines,” while the Legislature “is obligated to

Legislature determined that certain “basic values and character traits are essential to individual liberty, fulfillment, and happiness” to reach the “basic education” required by Article IX, Section 1. *See* RCW 28A.150.211; RCW 28A.150.210. These traits include, but are not limited to, honesty, integrity, and trust; respect for self and others; and self-discipline and moderation. *Id.* The Legislature recognized that there is more to an education as defined by Article IX, Section 1 than just reading, writing, and arithmetic—that to “prepare our children to participate intelligently and effectively in our open political system to ensure that system’s survival,” Washington children must develop other skills, many of which are reliant on interacting with other children and teachers—not isolated to a placement with little human interaction, like M.G.’s online placement. *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 517.

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give specific substantive content to the work and to the program it deems necessary to provide that ‘education’.” *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 518.

The Legislature details minimum instructional requirements necessary to carry out the basic education programming to comply with Article IX, Section 1. *See* RCW 28A.150.200. While the statute is explicit that it does not require “individual students to attend school for any particular number of hours per day or to take any particular courses,” it declares that “school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship.” RCW 28A.150.220(1), (4).

Ultimately, a Washington education should prepare all children to be able to participate successfully in society. The type of education envisioned by framers of the Washington Constitution, and supported by the Legislature since then, is robust and one of the most expansive education constitutional provisions for any state in this nation, which stands in direct contrast to the District’s treatment of M.G. There is no argument



to support the District's position that the online program given to M.G. was of sufficient quality and quantity to prepare him for life after high school and to be a contributing member of society. *See* RCW 28(A).150.220(1), (4). In fact, by barring M.G. from his neighborhood school with no plan to return and placing him on an online program he could not access, the District ensured that M.G. could not compete in our political system, labor market, and the marketplace of ideas, which stands in direct contrast to what Article IX, Section 1 has meant for Washington children since the beginning of statehood.

**2. Online Learning for Students Involuntarily Pushed Out of Neighborhood Schools Is Deficient and Not in Accordance with the Rights Outlined in Article IX, Section 1**

Washington state discipline laws mandate that students excluded from their regular educational setting for behavioral violations must receive educational services in an alternative setting during an exclusion. WAC 392-400-610(1)(d). Alternative settings must be comparable, equitable, and

appropriate to the regular educational services a student receives without the exclusionary discipline. *Id.* Chapter 392-400 of the Washington Administrative Code provides this safeguard for students who are disciplined and temporarily excluded from their regular placements. It does not allow the alternative placement to be utilized in perpetuity once the initial period of suspension ends; nor does it contemplate that the alternative setting truly constitutes an equivalent educational experience to the one the student would receive in their regular educational placement.

In the underlying matter, the District knew the online program did not meet M.G.'s specific educational needs and continued to exclude him from his neighborhood school. *M.G.*, 2022 WL 17420566 at \*3.<sup>5</sup> The District knew that M.G. lacked access to a computer, did not have internet access at his home, and that

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<sup>5</sup> The Court of Appeals for Division III outlined the online program requires a sixth-grade academic level to participate, while M.G. performed at or below a fourth-grade level. Additionally, the District wrote in a letter, "I am in agreement his current online placement has not been meeting his educational needs." *Id.*

M.G.'s bus ride to reach the District's computer lab was at least an hour long and still they barred him from his local school and only offered him online learning. *Id.* at \*3.<sup>6</sup> Over the course of four years, he enrolled in one art class and a few science and music classes and failed to graduate. *Id.* at \*3-6. The District never offered or enrolled M.G. in any core academic classes in the online program. *Id.* at \*2-3. This is not the type of education contemplated by Washington's Constitution or education statutes and is a complete failure of the District to ensure it is complying with its constitutional directive.

M.G.'s experience is, sadly, not unique. Online learning programs are not a substitute for in-person education. Online schools began to open in the United States in the 1990s, some

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<sup>6</sup> M.G. described his experience, detailing how the online program did not work for him. "I have been trying really hard to make online work, but it hasn't. I don't feel like I've been learning since I've been online. Ideally, I'd want to go back to Eisenhower and get my diploma. I know I'm capable. I think I would have done well if I could have stayed. I would have wanted to get into sports, like football." *M.G.*, 2022 WL 17420566, at \*6.

run by states and districts and others by private companies or nonprofit charter management organizations.<sup>7</sup> Since these schools have been in operation, multiple studies have reported that children in full-time online schools have more negative educational results than peers in traditional public schools. *Id.*

These negative outcomes are evident in Washington, as demonstrated by data collected by the Washington Office of Superintendent of Public Instruction (OSPI). OSPI collects data on Washington state schools and makes the information publicly available via a tool called the “Washington State Report Card.”<sup>8</sup> For the 2022-23 school year, Yakima Online, where M.G. was placed after his suspension ended, served 296 Washington

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<sup>7</sup> See Natasha Singer, *Online Schools Are Here to Stay, Even After the Pandemic*, N.Y. TIMES (April 11, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html>. The article acknowledges that a small percentage of parents and students prefer online learning for a variety of personal reasons and opt into it.

<sup>8</sup> Wash. Off. of Superintendent of Pub. Instruction, *Washington State Report Card*, <https://washingtonstatereportcard.ospi.k12.wa.us/>.

students.<sup>9</sup> As measured during the 2022-2023 school year, 61% of Yakima Online students graduated in four years, 13.8% met English Language Arts standards, 1.5% met math standards, and 11.1% met science standards. *Id.* By contrast, at Eisenhower High School (M.G.’s home school from which he was suspended), 80% of students graduated in four years, 50.0% met English Language Arts standards, 11.5% met math standards, and 32.8% met science standards. *Id.*

While these statistics are useful to highlight the general deficiencies of online schools like Yakima Online,<sup>10</sup> they do not

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<sup>9</sup> Wash. Off. of Superintendent of Pub. Instruction, *Washington State Report Card, Yakima Online, Yakima School District*, <https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/104803>.

<sup>10</sup> Washington OSPI, *Superintendent Reykdal’s Statement on School District Plans for Reopening School Fully Online*, Washington State Wire (July 22, 2020), <https://washingtonstatewire.com/superintendent-reykdals-statement-on-school-district-plans-for-reopening-school-fully-online/> (“Taking learning online presents challenges that districts will need to face. The methods of teaching and learning that were implemented across the state this spring will need to improve substantially.”).

tell the whole story, as the statistics are bolstered students who choose to enroll in Yakima Online and have the tools, resources, and desire to succeed in that online setting.<sup>11</sup> Yakima Online boasts that it attracts “highly-motivated, high-achieving students who want to attend a school that will allow them to complete high school graduation requirements early.” *Id.* This is not the case for students like M.G. who are forced out of their regular educational setting and do not have the resources and support to navigate online classes successfully. Therefore, this data underrepresents the deficiencies of a school like Yakima Online for students placed there through *de facto* expulsions. While Article IX, Section 1 does not require that all learning placements for children be identical, some school placements are so deficient that they become unconstitutional.<sup>12</sup> For M.G., the involuntary

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<sup>11</sup> See *Yakima Online*, <https://www.ysd7.org/cms/lib/WA02219114/Centricity/Domain/105/YOL%20Brochure.pdf>. See also Singer, *supra* note 7.

<sup>12</sup> Because of the COVID-19 pandemic, there is even more data about online schools. This data illustrates the profound, negative impact the shift to remote learning has had on educational

placement along with the district’s knowledge that he lacked the tools and resources to successfully complete the online placement violated his Article IX, Section 1 right to access an education.

### **3. Online Learning Disproportionately Impacts Students of Color and Cuts Students off from Necessary Resources**

Data also highlights that online learning disproportionately impacts communities of color and their academic progress in negative ways. In Washington, nearly a quarter of American Indian/Alaskan Native, Native Hawaiian/Other Pacific Islander, and Hispanic online students received at least one failing grade—a rate that is substantially higher than their white peers. *See Kwakye & Kibort-Crocker,*

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progress nationally and in Washington (*e.g.*, below grade level scores in testing and a higher proportion of students receiving failing grades or incompletes). Isaac Kwakye & Emma Kibort-Crocker, *Facing Learning Disruption: Examining the Effects of the COVID-19 Pandemic on K-12 Students*, Washington Student Achievement Council 3-4 (March 2021), <https://wsac.wa.gov/sites/default/files/2021-03-30-COVID-Learning-Disruption-Report.pdf>.

*supra* note 12 at 6-7. English language learners, low-income students, and students with disabilities all received more failing grades than their counterparts in online courses. *Id.*

Significantly, online learning not only impacts academics, but also negatively impacts students' mental health and wellbeing. In March 2021, the Federal Centers for Disease Control and Prevention published findings that suggested that virtual learning presents more risks than in-person instruction on mental and emotional health. Jorge V. Verlenden, Sanjana Pampati, Catherine N. Rasberry, et al, *Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic – COVID Experiences Survey, United States, October 8-November 13, 2020*, CDC (Mar. 19, 2021), [https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm?s\\_cid=mm7011a1\\_w#suggestedcitation](https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm?s_cid=mm7011a1_w#suggestedcitation). In addition to being cut off from peers and educators, which leads to negative mental health outcomes, remote learning cuts certain students off from



critical resources such as additional dedicated mental health supports, which may be received exclusively from a school setting. Heather Stringer, *Zoom School's Mental Health Toll on Kids*, APA (Oct. 13, 2020), <https://www.apa.org/news/apa/2020/online-learning-mental-health>.<sup>13</sup>

This Court has held that the requirement to provide an education to children under Article IX, Section 1 “would be hollow indeed if the possessor of the right could not compete adequately” in society. *Seattle Sch. Dist. No. 1*, 90 Wn.2d at 518. Online programs are deficient in numerous ways, leading to negative social-emotional and academic outcomes that stand in

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<sup>13</sup> Remote learning can cut off unhoused families and youth from critical resources they depend on, including a safe place for students during the day and free school meals. U.S. Interagency Council on Homelessness, *Supporting Children and Youth Experiencing Homelessness During the COVID-19 Outbreak: Questions to Consider* (Mar. 16, 2020), <https://www.usich.gov/tools-for-action/supporting-children-and-youth-experiencing-homelessness-during-the-covid-19-outbreak-questions-to-consider/>.

contrast to the education programming envisioned by the Washington Constitution and Legislature. M.G.'s forced placement in an online school that he could not access denied him his constitutionally-protected right to receive an education. WA. Const. Art. IX; *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012).

### **B. M.G.'s Disciplinary Process Violated his Due Process Rights**

Because education is paramount in Washington, it follows that Washington school districts do not have unfettered discretion to remove students from school. Washington provides expansive due process protections to all students to ensure that all students receive an education.<sup>14</sup> The regulations in Chapter 392-400 are plainly written and are intended to protect the rights

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<sup>14</sup> See WAC 392-400-010 (outlining the purpose of Chapter 392-400 WAC, which became effective in 2018). These regulations were changed in 2018 for the first time since the 1970s. See Wash. Off. of Superintendent of Pub. Instruction, *State Adopts Updated Rules on Student Discipline* (Aug. 13, 2018), <https://www.k12.wa.us/about-ospi/press-releases/state-adopts-updated-rules-student-discipline>.

of all students in Washington—even those who engage in behavioral violations or who may be a perceived threat—and to ensure that they receive an appropriate education.

Chapter 392-400 establishes the minimum procedural and substantive rights of students when they are subject to discipline in Washington school districts. WAC 392-400-020. The chapter invites school districts to establish additional protections for students consistent with federal statutes and regulations, state statutes, and common law, and rules prescribed by OSPI. *Id.* Notably, nothing in the chapter allows the District to reduce or take away due process and other protections specified in the rules.

WAC 392-400-430(8) provides clear conditions and limitations on suspensions like the one at issue in this case. The District agrees that none of the exceptions listed in WAC 392-400-430(8) apply here, but, regardless, the District argues that it has “broad[] statutory authority to prohibit M.G.’s return based on safety concerns.” *M.G.*, 2022 WL 17420566, at \*11.

School districts do not have such unfettered deference. One of the stated purposes of Chapter 392-400 is to provide a safe learning environment for all students. An emergency or an alleged threat to students or school personnel does not operate as an invitation for a district to ignore procedural protections while disciplining and excluding students. Instead, Chapter 392-400 lays out specific steps the district must take before and after doing so.

For example, WAC 392-400-335 generally governs classroom exclusions when a student's presence allegedly poses an immediate and continuing danger to other students or school personnel. When a teacher administers a classroom exclusion on these grounds, the teacher must immediately notify the principal and the principal must meet with the student as soon as reasonably possible before administering appropriate discipline. WAC 392-400-335(3). Nothing in this regulation allows a district to unilaterally decide that its safety concerns outweigh the need to provide procedural protection.

Similarly, WAC 392-400-510 governs conditions and limitations on emergency expulsions. Even though a school district may immediately remove a student from the current school placement if it has sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel, the emergency expulsion may not exceed ten school days and it must be converted into another form of discipline within ten school days from the start of the expulsion. WAC 392-400-510. That the danger might be determined to be a "continuing danger" is not cause to extend the emergency expulsion or decide not to follow the conditions and limitations associated with that form of discipline.

Moreover, even in a situation where an emergency expulsion or other alleged safety concern results in longer-term exclusionary discipline, these laws provide specific and clear guidance on the safeguards and protections that are afforded a student regarding reentry into school. The goal of Chapter 392-400 is to "[f]acilitate collaboration between school personnel,

students, and families to ensure successful reentry into the classroom following a suspension.” WAC 392-400-010(7) (emphasis added).

WAC 392-400-710 provides extensive guidance on how districts must manage student reengagement after the end of a long-term suspension or expulsion. Nothing in that section permits a district to unilaterally decide that the student continues to pose a threat, decide to skip the required steps, and then decide to place the student wherever it sees fit. In fact, WAC 392-400-810 outlines the limited “exceptions” for when the district may preclude a student from returning to the student’s regular educational setting following the end date of a suspension. The exceptions are limited to protecting victims of certain crimes not at issue in this case and, even then, the exceptions are limited to keeping the alleged offender away from the alleged victims’ classrooms—not excluding the alleged offender from an entire school and community altogether as the District did here.

**C. Vague Punishments that Fail to Adhere to Due Process  
Invite Racial Bias and Deprive Students of their Article  
IX, Section 1 Right to an Education**

Article IX, Section 1 includes an explicit prohibition against discrimination based on race, color, caste, and sex. The framers of the Washington Constitution were aware that many states created racially segregated school systems that favored white students over students of color. In response, the framers of the Washington Constitution were clear—students from all walks of life within the borders of Washington were expressly protected “without distinction” in Article IX, Section 1.<sup>15</sup> The Framers decided to write Article IX so as to require the ample education of all children residing within this state’s borders. To make their intent doubly clear, the framers added to the word “all” the

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<sup>15</sup> The framers explained that they came from “[a]lmost every walk of life... so that...each member of the convention could draw on his experience elsewhere to decide on what was best to retain or omit.” John R. Kinnear, *Notes on the Constitutional Convention*, 4 Wash. Hist. Q. 276, 277-78 (1913).

requirement that the provision of education be “without distinction or preference on account of race, color, caste, or sex.”

While children may not always be knowledgeable about the specific legal and due process protections in Chapter 392-400 WAC and stemming from Article IX, Section 1, they place a high value on fairness in their interactions with adults at school. A *de facto* expulsion, like the one given to M.G., based on vague and overbroad safety concerns stemming from alleged gang activity does not make a school community safer; rather, it breeds distrust because children are keenly aware that discipline practices based on subjective standards are unfair.

M.G. was excluded from his school community for a series of actions deemed to be gang related, including having a particular haircut, wearing a red shirt, and of the fact that the District placed him on a “gang contact” in middle school. *M.G.*, 2022 WL 17420566, at \*1. Vague and overbroad disciplinary practices, like the ones at issue here, adversely affect students of color at a higher rate than white students because they do not provide clear



standards for such enforcement and allow bias to creep in. *City of Chicago v. Morales*, 527 U.S. 41, 42, 119 S. Ct. 1849, 144 L.Ed.2d 67 (1999) (holding a gang loitering ordinance was unconstitutionally vague in failing to provide fair notice of prohibited conduct).<sup>16</sup>

Gang-related disciplinary practices punishing students based on perceived gang memberships or affiliations that exist outside the educational setting result in discrimination based on aspects of a student's identity, including race and ethnicity. Jesse Christopher Cheng, *Gang-Specific Policies and Regulations in the K-12 Educational Context*, 2 Whittier J. Child & Fam. Advoc. 55, 76 (2003). As in *Morales*, vague policies and contracts can lead to discriminatory enforcement because they do not provide clear standards for enforcement and allow bias to

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<sup>16</sup> The Eighth Circuit found that school regulations about gang activity were overly vague when it did not provide a definition of the term, "gang." *Stephenson v. Davenport County Sch. Dist.*, 110 F.3d 1303, 1308-10 (8th Cir. 1997) (finding the Davenport Community School District's regulation prohibiting "[g]ang related activities such as display of 'colors,' symbols, signals, signs, etc." to be void for vagueness).

operate instead. *See Morales*, 527 U.S. at 42; *see also Stephenson*, 110 F.3d at 1308-10. Such policies can also confuse teachers and administrators who may not understand the students' cultural backgrounds and thus misinterpret behavior. Jesse Christopher Cheng, *Gang-Specific Policies and Regulations in the K-12 Educational Context*, 2 Whittier J. Child & Fam. Advoc. 55, 77 (2003). This results in a high potential for teachers and administrators to interpret "gang activity" in a racially-biased, inconsistent manner, inviting constitutional and civil rights violations.

The Washington Legislature acknowledges that students of color disproportionately face suspensions and expulsions, and stated an intention to "[r]educ[e] the length of time students of color are excluded from school due to suspension and expulsion."<sup>17</sup> When students of color are excluded from school, the entire school community suffers. David S. Yeager, Valerie

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<sup>17</sup> Laws of 2013, 2d Spec. Sess., ch. 18 §§ 302 & 303; Laws of 2016, ch. 72, § 1.

Purdie-Vaughns, Sophia Yang Hooper & Geoffrey L. Cohen, *Loss of Institutional Trust Among Racial and Ethnic Minority Adolescents: A Consequence of Procedural Injustice and a Cause of Life-Span Outcomes*, 88 Child Dev. 658, 666 (2017), <https://pubmed.ncbi.nlm.nih.gov/28176299/> (discussing how Black students outnumbered white students for subjective discipline problems and likely felt a sense of procedural injustice). Students who are subjected to exclusionary discipline practices are more likely to become involved in the juvenile legal system, while also losing significant amounts of necessary instructional time. The U.S. Department of Education, *Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates*, March 2023, <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> at 5. “A punishment-based practice works against the desired outcome of meeting school expectations and learning by activating students’ fight, flight, and freeze behaviors, often leaving students with shame and guilt

long after the interaction and breeding distrust among and dehumanizing those who participate...all these impacts may become barriers to effective learning.” The Department of Education—Office for Civil Rights, *Supporting Students’ Social Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Student and Teacher Support Teams*, [https://t4pacenter.ed.gov/Docs/Fact-Sheets/Supporting\\_Students\\_School\\_and\\_District\\_Leaders\\_508.pdf](https://t4pacenter.ed.gov/Docs/Fact-Sheets/Supporting_Students_School_and_District_Leaders_508.pdf).

Students who remain in school when their peers are excluded in ways that appear race-based and arbitrary lose trust and faith in the fairness of educators, risking disengagement from education and experiencing negative academic outcomes. Evie Blad, *When School Doesn’t Seem Fair, Students May Suffer Lasting Effects*, EducationWeek (Feb. 14, 2017), <https://www.edweek.org/leadership/when-school-doesnt-seem->

fair-students-may-suffer-lasting-effects/2017/02.<sup>18</sup> In other words, aggressive, unfair discipline discourages open and trusting relationships in a school community, which negatively impacts student performance throughout the school community.

Though schools have a right to implement policies to protect their students and staff, the types of punishment-based, exclusionary, and vague practices at issue here invite constitutional issues and create a negative culture that only goes to perpetuate hostile and detrimental learning environments. Experts repeatedly recommend that schools do away with vague, punitive discipline systems in favor of developing positive cultures and implementing restorative justice practices to ensure a safe and supportive school environment for students and teachers.

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<sup>18</sup> See also Odis Johnson Jr., *et al.*, *Disparate Impacts: Balancing the Need for Safe Schools with Racial Equity in Discipline*, 6(2) Pol’y Insights from the Behav. and Brain Scis.162 (2019), <https://journals.sagepub.com/doi/abs/10.1177/2372732219864707>.

“The reality is that exclusionary discipline practices do not make schools more conducive to learning, do not help improve student behavior, and do not make schools safer. But these practices do force youth off-track.” Sara Luster, *How Exclusionary Discipline Creates Disconnected Students*, neaToday, <https://www.nea.org/nea-today/all-news-articles/how-exclusionary-discipline-creates-disconnected-students#:~:text=%E2%80%9CThe%20reality%20is%20that%20exclusionary,do%20not%20make%20schools%20safer.>

Similarly, the Federal Department of Education’s Office for Civil Rights has repeatedly recommended that instead of relying on exclusionary discipline practices, schools should implement responsive discipline policies and practices that focus on teaching students the inner self-discipline necessary to mitigate future issues in school and in society. The Department of Education—*Strategies for School and District Leaders*, [https://t4pacenter.ed.gov/Docs/Fact-Sheets/Supporting\\_Students\\_School\\_and\\_District\\_Leaders\\_508](https://t4pacenter.ed.gov/Docs/Fact-Sheets/Supporting_Students_School_and_District_Leaders_508)

.pdf at 2-3. This keeps students open to learning as opposed to pushing them away and ostracizing them from the school community without the necessary social-emotional tools to succeed. *Id.*<sup>19</sup>

The types of biases that fuel exclusionary discipline practices stand in direct contrast to and violation of the meaning behind Article IX, Section 1, which ensures that *all* students, regardless of race, color, caste, or sex are given the opportunity to learn. For M.G., he was excluded from his school community for subjective, gang-related activity. He was not given appropriate due process throughout the disciplinary process. At every turn,

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<sup>19</sup> Researchers have found that interventions that seek to evoke empathy in teachers can mitigate biases and narrow the racial gap in exclusionary discipline practices. Yasmin Anwar, *Empathy Softens Teachers' Biases, Cuts Racial Gap in Student Suspensions*, Berkeley News, <https://news.berkeley.edu/2022/03/23/empathy-softens-teachers-biases-cuts-racial-gap-in-student-suspensions/>. This study concluded that having teachers complete two “empathy-evoking” sessions during one school year reduced the racial gap in suspensions by 45%. *Id.* See also Jason A. Okonofua, *A scalable empathic-mindset intervention reduces group disparities in school suspensions* (March 23, 2022), <https://www.science.org/doi/full/10.1126/sciadv.abj0691?af=R>

the District characterized M.G. as a threat, barred him from his school community, and declined him access to an education—in direct violation of his right to access an education as defined by Article IX, Section 1.

### III. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court affirm that the District violated M.G.’s constitutional right to an education as outlined by Article IX, Section 1.

#### **RAP 18.17 Certification**

Undersigned counsel certifies that, pursuant to RAP 18.17(b), this brief contains 4,980 words, including footnotes, but not including those portions exempted from the word count by RAP 18.17(c), as counted by word processing software in compliance with RAP 18.17(c)(10).

DATED this 8th day of September, 2023.

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I certify that on the 8<sup>th</sup> day of September, 2023, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 8<sup>th</sup> day of September, 2023 at Seattle, WA.

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