

Gangs in Schools Task Force

Report to the Legislature



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State Superintendent of
Public Instruction

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2010 Report to the Legislature

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Executive Summary

The 2007 Legislature directed the Superintendent of Public Instruction to convene a task force under Substitute Senate Bill 5097 to examine how gangs affect school safety. The task force was directed to recommend methods to prevent and eliminate gangs in schools, gather intelligence on gangs and share information about gangs.

In addressing the problem of gangs in schools, the task force recognizes that the issue is larger than the individual schools, being a community and societal problem. While this task force was charged specifically with addressing the issue of gangs in schools, it is clear that cooperative communitywide programs are necessary to effectively reduce youth gang activity and gang violence. Schools, however, are an effective avenue to provide prevention and intervention services to the largest segment of the youth population.

The recommendations below reflect four approaches to addressing the problem of gangs in our communities and their effect on school safety: prevention, intervention, suppression, and student reentry. **The task force strongly encourages the adoption of a balanced platform that employs all four approaches rather than relying primarily on suppression, finding that prevention and intervention are most effective.**

A steering group of professionals with experience and knowledge of both gangs and school operations was selected as the Executive Steering Committee of the Gangs in Schools Task Force, and worked intensively through 2010. Much of the work of the task force during 2010 revolved around further refining the recommendations previously made to the Legislature in the 2008 and 2009 reports.

Seven recommendations were previously developed based on the findings of the task force in 2008. The 2010 recommendations have been revised and refined and are presented in priority order:

1. Create a dedicated funding formula for support of transition programs to provide educational, intervention and reentry services for suspended or expelled students.
2. Revise the statute that authorizes schools to suspend or expel students who engage in gang activity, including a definition of “gang” to be consistent with the criminal code and the definition of “gang activity” to include intimidation of staff or students.
3. Establish 1000-foot “school safety zones” in statute, from which gang members can be excluded if they engage in activity that warrants concern for the safety of staff or students.
4. Develop sample anti-gang school policies that include consistent discipline practices and a mandate that all districts adopt an anti-gang policy.
5. Provide support for ongoing in-state training for all agencies and providers serving gang-affected youth.
6. Provide grants to school districts and communities for gang prevention and intervention programs aimed at reducing gangs in schools, intervening with gang-associated youth to reduce suspensions, and providing education to families.
7. Development of a secure information-sharing system for exchange of information on gang activity.

During the 2010 Legislative Session, two House bills were written based on the recommendations from the Gangs in Schools Task Force. House Bill 2835 relating to school safety zones and Substitute House Bill 2834 relating to gang and hate group activity on school grounds and at school activities. These bills received hearings in the House, but did not pass.

I. Introduction

This report documents the work of the Gangs in Schools Task Force during 2010, including the refinement of recommendations made in 2009 and 2008. The Office of Superintendent of Public Instruction (OSPI) was directed by the 2007 Legislature to convene a task force to examine how gangs are affecting school safety and to report annually on methods to eliminate existing gangs in schools, prevent new gangs in schools, gather intelligence on gangs, and share information on gangs.

Enacted by the 2007 Washington State Legislature, Substitute Senate Bill (SSB) 5097 was a multifaceted piece of legislation that directed the Office of Superintendent of Public Instruction, among other things related to school safety, to establish a task force to address the problem of gangs in schools. The membership of the task force was to be established by OSPI and comprised of stakeholders with expertise in the issue of gangs in schools.

The charge of the task force was established in SSB 5097 and added a new section to RCW 28A.300.490 which reads:

A task force on gangs in schools is created to examine current adult and youth gang activities that are affecting school safety. The task force shall work under the guidance of the superintendent of public instruction school safety center, the school safety center advisory committee, and the Washington association of sheriffs and police chiefs.

The task force shall be comprised of representatives, selected by the superintendent of public instruction, who possess expertise relevant to gang activity in schools. The task force shall outline methods for preventing new gangs, eliminating existing gangs, gathering intelligence, and sharing information about gangs.

Beginning December 1, 2007, the task force shall annually report its findings and recommendations to the education committees of the legislature.

II. Process

The Gang in Schools Task Force continues to ensure broad stakeholder representation from across the state with expertise in the issue of gangs in schools. The majority of members have been involved in the work for many years and new members are added as openings arise. During the 2010 year many members were unable to continue participation because of state budget cuts and the state's inability to reimburse task force members for travel expenses.

Executive Steering Committee:

The organization of the Gang in Schools Task Force consists of an executive steering committee, less formal regional committees, and an extended task force membership of interested stakeholders who participate on an ad hoc basis. The executive steering committee is a group of 17 members who serve as the statewide core of the Gangs in Schools Task Force. In establishing the membership of the steering committee, the

participation and membership of school and school district representatives was determined to be important, as was a balance of other stakeholders representing agencies and organizations which work with schools and gang-associated youth.

The executive steering committee of the task force during 2010 consisted of the following members:

Tom Boehme, Principal
Centralia High School, Centralia School District

Detective Kevin Fairchild
Special Investigations Division, Everett Police Department

Kellie Henderson, Juvenile Probation Counselor
Clark County Juvenile Court

Jose Hernandez, Student Intervention Coordinator
Pasco School District

Terry Herold-Prayer, Higher Education Mapping Coordinator
Washington Association of Sheriffs and Police Chiefs

Uriel Iniguez, Executive Director
Commission on Hispanic Affairs

Cheryl Jones, Executive Director
Allen Renaissance

Lee Maras, Principal and School Safety Director
Yakima School District

Deputy Larry Sanchez, School Resource Officer
Grant County Sheriff's Office and Wahluke School District

Travis G Smith, Program Supervisor (interim task force project manager)
Office of Superintendent of Public Instruction

Dennis Turner, Executive Director
Building The Bridges

Randy Town, School Safety Coordinator
Educational Service District 105 (chair)

Bethan Tuttle, PTA Representative and Legislative Director
Washington State PTA and Community Watch

Miguel Villahermosa, Director of Secondary Education
Tacoma Public Schools

Tyson Vogeler, Program Supervisor (former task force project manager)
Office of Superintendent of Public Instruction, Washington State School Safety
Center

Ken Wong, Teen Programs Director
City of Redmond

The task force and executive steering committee operate in a nonexclusive manner and have invited participation by all interested parties. Notice of all steering committee meetings is distributed electronically to nearly 200 contacts statewide that have been involved or indicated interest in the task force work. Contacts continue to be added to that list. These satellite members of the task force have had the opportunity to contribute to the work of the task force by providing feedback to the steering committee, and some have attended and contributed at regional meetings.

Meetings and Forums:

The executive steering committee met four times as a group during 2010. Each meeting was a work session where the committee discussed components of the legislative assignment, the information they had gained from forums and regional task force meetings, and their ideas for solutions to the gang problem. The meetings were held in various locations around the state to encourage participation by local stakeholders.

Awareness Training and Outreach:

The task force and the former task force project manager provided trainings and outreach to schools, districts, and community organizations. Unfortunately, as a result of state budget cuts the task force could not meet all the demands and requested trainings.

III. Findings

Through the research, discussion, and consideration of input, training, and pertinent literature, the executive steering committee distilled its work to the following general findings in 2008 and 2009 and continues to refine the findings for 2010:

1. Gang activity continues on the rise in Washington schools and communities.
2. The presence of gang activity in the vicinity of schools poses a risk to staff and student safety and school security.
3. Effective anti-gang initiatives require the elements of prevention, intervention, suppression, and reentry programs.
4. Intimidation of staff and students by gang members has large impacts on the educational environment and perception of school safety.
5. Schools need a unified policy to address gang activity or gang-associated students.
6. Administrators, teachers, and other school staff lack current information on gangs, gang indicators, and gang activity.
7. Most schools and communities lack the resources to provide effective prevention and intervention work with gang issues.

These findings form the foundation for the recommendations made by the task force. Although these findings were reported and discussed comprehensively in the December 2008 report, they continued to be reiterated herein with updated information as appropriate.

Stemming the problem of youth gangs in our schools and our communities through prevention and intervention will require significant expense at a time when government coffers are lean. This is, however, essentially an investment in the future of our state and our country. Dollars invested in educating and providing services to struggling youth pay off manifold over the long term. Conversely, failing to address the youth gang problem through provision of education and support services will only lead to increased future expenditures for social services, family intervention, law enforcement, and incarceration. Reducing education, prevention, and intervention services now may severely impact our state's fiscal future, as has previously been noted by the Legislature.

IV. Recommendations

The task force developed the following seven (7) recommendations during 2008 to address the problem of gangs in schools. The Gangs in Schools Task Force continues to support the refined prioritized recommendations in 2010.

1. Develop a Dedicated Apportionment for Transition Programs

- a. The task force recommends development of a dedicated funding formula for programs serving students that have been long-term suspended or expelled for gang-related behavior, violent or threatening behavior, possession of weapons, or other serious infractions that warrant concern for the safety and order of the school environment. Such dedicated funding should provide an enhanced apportionment to support assessment, focused programming, behavioral and emotional intervention, and education of these students in an off-campus environment with the goal of school reentry.*
- b. The task force also recommends that the Legislature take whatever action is necessary to commence a focused study on addressing the educational needs of suspended and expelled students.*

Two of the priorities of OSPI under the leadership of Superintendent Randy Dorn are reducing the number of dropouts and addressing the achievement gap. These two challenges are closely tied to, and influenced by, the student disciplinary actions taken by schools. One of the strongest risk factors for dropouts is a pattern of school discipline and suspension,¹ and some of the achievement gap is often attributed to disproportionate discipline of minority students.

There has been increased attention to the impact of suspensions and expulsions on student learning recently. In October 2009, the Washington State Office of the Education Ombudsman (OEO) released recommendations for reducing the academic impacts of suspension and expulsion. Those recommendations included requiring school districts to provide educational services for long-term suspended and expelled students. As the OEO notes, "the alternative options for these students are few and vary widely from district to district. Access to lesson materials and homework assignments are often at the discretion of individual teachers; some districts provide alternative

¹ Evertson, C.M., and C.S. Weinstein (2006).

education settings while some do not. *The result is that students are being punished for misconduct with the loss of their education.*²

Long-term suspension significantly affects a student's academic success, and expulsion almost certainly predicts school failure. Students long-term suspended or expelled from school fall behind in their academic progress, thereafter have lower school commitment, and can be expected to detach from school. School detachment, resulting from expulsion or other factors, is a strong risk factor for gang involvement.³ School exclusion is also a strong predictor of involvement with the juvenile justice system.⁴

Most districts provide programs for at-risk youth, including alternative school programs. In a few districts, such as Seattle, programs are in place to educate expelled students. Yet, in many districts students who are suspended or expelled are frequently denied educational services. Ironically, even though our state has compulsory education until age 18, when students are long-term suspended or expelled and therefore not attending any school, they are seldom referred to the court under the Becca law. Expulsion is not one of the exemptions from mandatory public school attendance as provided in RCW 28A.225.010.

Recognizing the need to provide educational services to suspended and expelled students, while at the same time protecting the regular school environment, the task force recommends the consideration of "transition programs" for these highly at-risk students. Such programs would serve to continue the education of these students outside of the regular school setting, with the intent that these students would transition back to their home school when it is safe and practical to do so. This model is consistent with the response to intervention (RTI) continuum, where a small percentage of high-risk students require focused intensive interventions.

Although used commonly as a means of discipline, school exclusion does not address the underlying cause of the misbehavior. Students who are suspended often return to school and engage in the same type of misbehavior, with the consequence of a longer exclusion. Unless there is an intervention, the cycle continues until the student is expelled, drops out, or moves away. This cycle has been termed "school pushout" by some who study the issue, alluding to a system that essentially forces some students to dropout due to insurmountable hurdles. Related to the school pushout issue is a body of research that looks at how school suspensions and expulsions contribute to the "school to jail pipeline." Increasingly, there is attention to the need to remodel our system of school discipline to help reduce the percentage of dropouts.

A premise of the transition school recommendation is an increased level of funding for students in transition schools, so that appropriate interventions can be provided to support a student's school success. Such interventions might include positive behavioral supports, anger replacement training, family management counseling, mental health services, substance abuse counseling, gang intervention, individual academic support, remediation, and a spectrum of other services to address barriers to learning and social success.

² "Reducing Missed Instructional Time for Suspended and Expelled Students." Washington State Office of the Education Ombudsman. (2009).

³ Hill, K.G., et al. (1999).

⁴ Wald, J., and D. Lawsen. (2003). p. 7.

The scale of the suspension/expulsion problem is greater than many realize. It is estimated that in Washington approximately 10,000 students are long-term suspended or expelled each year.⁵ This data comes from analysis of behavior reports submitted to OSPI by school districts. Reported expulsions for the 2008–09 school year were 1,800, which likely accounts for the majority of expulsions, although some expulsions are not required to be reported. Data are not available for gang-associated suspensions or expulsions, due to a lack of reporting requirements.

The task force notes that the WACs governing student discipline require school districts to take actions to provide for the education of students who are expelled. WAC 392-400-275 stipulates that “the expulsion shall be brought to the attention of appropriate local and state authorities . . . in order that such authorities may address the student’s educational needs.” Unfortunately, this seems to happen rarely, and as pointed out in the 2008 report of this task force, many expelled students are denied any access to public education services. Compounding the issue, as state budget cutbacks reduce available school district resources, the options available to suspended or expelled students seem to be shrinking. In recommendations that parallel the task force recommendation for transition schools, the Office of the Education Ombudsman highlighted the need to provide for the education of long-term suspended and expelled students, noting that students should not be punished by withholding of education for behavioral transgressions.

Without the availability of transition schools or some similar provision, where do excluded students turn for schooling? At the time that WAC 392-400-275 was written, the state funded education centers (previously called education clinics) that were established to “provide a necessary and effective service for students who have dropped out of common school” and those students “unable to attend a particular common school because of disciplinary reasons, including suspension and/or expulsion.”

It would therefore appear that the state intended to provide for the education of expelled students through the funding of education centers. These education centers were private programs that were approved by OSPI and eligible to receive state funding to provide for the needs of these high-risk students and dropouts, including focused academic remediation. For reasons unclear, following agency efforts to increase start-up funding for education centers and alternative schools in the late 1990s, requests for ongoing funding of education centers ceased after 2003. As a result, the available placements for expelled students largely disappeared unless parents had the resources to pay for schooling.

Online learning programs are sometimes recommended to parents of expelled students as an option for continued education; however, phone calls to OSPI indicate that many of the online providers reject applications from students with a disciplinary history. Despite the fact that students in online programs may never be in the company of staff or other students, many of the districts with online programs reportedly use RCW 28A.225.225 to reject applications from nonresident students who have been long-term suspended, are expelled, or have a history of gang involvement. This may be a matter that the Legislature will want to address as a means to provide for education of excluded students in the absence of education centers.

⁵ Calculated from OSPI statistics for 2007–08. See 2008 report of the Gangs in Schools Task Force for discussion.

The task force notes that the existing authority for education centers under RCW 28A.205 could potentially be utilized to provide an immediate means to serving the needs of suspended and expelled students until permanent provisions are implemented for transition schools or a similar program. Likewise, the Building Bridges Workgroup, created by Second Substitute House Bill 1573 in 2007, has advocated legislation authorizing “retrieval schools” which could serve the needs of suspended and expelled students.

2. Revise the School Definitions of “Gang” and “Gang Activity”

The task force recommends revision of RCW 28A.600.455 for consistency with criminal code, to include intimidation as an element of the school definition of gang activity, and to provide for OSPI development of WAC for gang-identification protocol, definition of “gang activity,” and to address other gang-related disciplinary issues.

The 2007 Legislature authorized two task forces to make recommendations on how to address increasing gang issues: the Gang Crimes Work Group and the Gangs in Schools Task Force. The Gang Crimes Work Group focused on suppressive efforts, and resulted in legislation which revised definitions applicable to gangs and gang crimes, created additional gang crimes such as criminal gang intimidation and gang graffiti, and which proposed civil gang injunctions which were stripped from the bill prior to its passage. The definitions which were enacted through Engrossed Second Substitute House Bill (E2SHB) 2712 in 2008 specifically excluded schools because the Gangs in Schools Task Force was in process at the time.

The current statute that authorizes school districts to suspend or expel students for gang activity is RCW 28A.600.455, enacted in 1997. The statute as written requires two elements to impose suspension or expulsion for gang activity:

1. The student is a member of a gang.
2. The student *knowingly* engages in gang activity on school grounds.

Demonstrating that a student is a member of a gang relies on a definition with three components:

1. The group consists of three or more persons.
2. The group has an *identifiable* leadership.
3. The group, on an ongoing basis, conspires and acts in concert *mainly* for criminal purposes.

When written, the definition of a gang in RCW 28A.600.455 was typical and appropriate. As gangs have evolved over the last decade, however, contemporary gangs and groups have emerged that do not fit within the constraints of the definition. Compared to gangs of the 1990s, gangs today are less likely to have an identifiable leader or leadership and tend to be more loosely organized. Groups such as the Insane Clown Posse and extremist groups are now present in schools and are not easily addressed by the existing statute and gang definition. Another factor influencing the need to change definitions is the growing body of case law through challenges of gang statutes and definitions, including school gang policies.

The task force heard from school administrators that the gang definition in RCW 28A.600.455 is limiting enough that some avoid the use of the statute altogether and impose discipline based on some other categorization of an infraction. For example, rather than characterize the wearing of gang-related attire as “gang activity,” it is more likely to be recorded as a dress code violation. Similarly, a gang-motivated fight will only be recorded as a fight or assault. One of the reasons that administrators choose not to suspend or expel for gang activity is the potential that they will have to support that action at a disciplinary hearing, and proving the three elements that constitute a “gang” in the current statute is sometimes difficult.

Another difficulty with the current statute is the lack of a clear definition of “gang member.” Again, principals shared with the task force the problems associated with trying to prove a student is a gang member in order to impose discipline under RCW 28A.600.455. Unless the student self-admits membership or a law enforcement officer can verify the student is a verified gang member, using the existing statute can be problematic. Some districts have started to use gang member identification metrics developed and used by local police departments (see Appendix D for an example); however, this is an untested practice and may not be upheld given the current inconsistency between definitions in criminal code and school statute.

The Gangs in Schools Task Force recommends the adoption of the definitions enacted through E2SHB 2712 for statewide consistency including schools. These definitions were carefully crafted to apply to contemporary gangs and also are able to capture hate and extremist groups that may be active in schools. The task force also includes in this recommendation that OSPI be provided authority to develop WAC that may include gang member identification standards, more specific definitions of what constitutes gang activity in schools, and guidelines for discipline related to gang activity.

3. Establish School Safety Zones in Statute

The task force recommends the creation of a new statute, authorizing the creation of 1000-foot “school safety zones” from which persons may be excluded if they are engaging in activity which warrants alarm for the safety of staff or students or which causes a substantial disruption of the educational process.

Across the country, there has been a push by lawmakers over the last decade to increase the safety of students and staff in our schools. There are many examples of states passing legislation designed to reduce crime and other unwanted activity in the vicinity of schools: drug sentence enhancement zones, restrictions of sex offender residences, weapon-free zones, zoning restrictions near schools, and ordinances that provide some ability to control public spaces near schools. Many of these efforts in other states have created “school safety zones” within which certain activities are prohibited or restricted. All of these efforts highlight the societal interest in the education of our children and their safety while at school.

School districts in Washington put forth considerable effort to reduce or eliminate gang activity on their campuses; however, they are essentially powerless to reduce or eliminate gang activity in the neighborhoods surrounding their schools. Through concerted efforts to suppress gang activity on campus, including the suspension and expulsion of gang members, schools become relatively safe “islands” in sometimes less-than-safe neighborhoods. In fact, when schools suspend or expel students, they effectively push gang-associated students into the community and onto the streets

around schools. The task force heard from many principals, assistant principals, and school resource officers (SROs) that they can only push students to the edge of school property. All too frequently the student who is expelled for being a risk to the safety of staff and students, ends up across the street from the school where he or she continues to interact with other students, disrupt the school, and sometimes engages in criminal activity.

The area around the school can also be a magnet for older gang members who seek to recruit students into the gang, stir up trouble with rival gang members, traffic drugs, or engage in other nefarious activity. Some schools have had incidents where nonstudent gang members have come to campus to start gang fights. School officials are powerless to do anything about gangs near the school, and SRO and security officers have only limited tools available. One SRO told the task force he spends a large portion of his day patrolling the perimeter of the campus, where gang-associated youth congregate, and he “can only move them along.”

The police lack the authority to effectively assist the schools with this problem, unless the persons are disturbing the peace or otherwise engaged in obvious criminal behavior. The presence of suspended students, gang members, and others in the vicinity of the school campus may warrant rational concerns for the safety of staff and students, but there is no enforcement tool currently available to address these safety concerns.

The proposed “school safety zones” are comparable to efforts in other states to make the areas in the vicinity of schools safe. Existing federal and state statutes already establish zones around schools where certain activities are limited, prohibited, or where penalties for criminal activity are increased. The Gun-Free School Zones Act establishes a 1000-foot zone around all schools in which possession or transport of firearms is prohibited except for certain narrow exceptions. The act exempts private property and those persons licensed to carry a concealed firearm, but has no requirement to demonstrate that the person in possession of a gun is a threat to the school to sustain a violation.⁶

Similarly, RCW 69.50.435 provides for enhanced sentencing for drug offenses committed within 1000 feet of a school or a school bus stop. This statute adds up to 24 months to the standard sentencing range for drug offenses committed in these protected zones.

The proposed school safety zones concept is similar to park exclusion ordinances that have been passed by many jurisdictions in our state following the example set by Seattle in the late 1990s. These ordinances authorize park directors or other non-commissioned employees to exclude a person from a public park if they violate park rules or violate state or local laws. If the person returns during the exclusion period, they may be charged with criminal trespass. These ordinances proved to be an effective tool to help Seattle manage unwelcome conduct in parks and make them safer and more welcoming for families. Because of the effectiveness of Seattle’s park exclusion ordinance, similar laws have been enacted in cities across our state and across the country.

⁶ 18 USC § 922.

In addition to park exclusion ordinances, some jurisdictions have embraced exclusions zones as an effective community policing tool to reduce criminal activity in certain high-crime areas. An example in our region is the drug-free and prostitution-free zone ordinance enacted by Multnomah County, Oregon. If a person is arrested for a drug offense in a drug-free zone (DFZ), he or she is automatically excluded for 90 days plus an additional one year on conviction; returning to the DFZ during the exclusion is cause for immediate arrest for criminal trespass. Like the proposed safe school zones legislation, the DFZ ordinance provides for variances for transportation and legitimate business and also provides an appeal process.

Multnomah County has found that DFZs are an effective policing tool to reduce repeat offenders, and the City of Gresham is developing community support for DFZs surrounding area schools.⁷ The DFZs have been shown to be effective at reducing drug crime activity; however, they have also been challenged on grounds of constitutionality. The City of Portland has been forced to amend the DFZ ordinance as a result of court rulings, however no court has struck down the ordinance in its entirety.⁸

The creation of safe school zones and the ability to exclude persons from these zones under certain limited conditions is one task force recommendation that has been almost universally supported by school principals and school resource officers. The task force heard numerous times that this is a tool that is desperately needed to help principals keep schools and students safe. Although law enforcement officers currently have some authority to exclude persons from the public spaces immediately adjacent to a school,⁹ this authority does not extend to principals or school security who only have authority over school property. Further, the current statute does not provide any extended exclusion provision, so a school resource officer may have to deal with the same person several times during a school day.

As developed, the school safety zone recommendation would be a new statute that provides school administrators and law enforcement officers the authority to exclude persons from areas within 1000 feet of a public school if their behavior was materially disrupting school operations or warranted reasonable alarm for the safety of students or staff in the school. If a person was excluded from the school safety zone, the exclusion order could vary in duration from 24 hours to long term, but would be subject to limitations intended to protect civil rights.

During 2009, the task force reviewed and refined the school safety zone recommendation. As the recommendations of the task force were presented to various groups including school administrators, school security officers, and law enforcement, the complexity of the proposal became more evident. Significant civil rights concerns were raised by some stakeholders which had to be researched and addressed, and the task force was also challenged to draft language which was sufficiently specific to avoid challenge on the basis of being vague or overly broad. As this report is being drafted, the task force continues to refine a draft bill (Appendix B) to address these issues, but also notes that similar statutes have been upheld by the courts in other states.

⁷ Multnomah County District Attorney.

⁸ Wyse, J. (2004.)

⁹ RCW 28A.635.020.

The task force recommends these revised elements be included in any proposed legislation creating school safety zones, with those followed by an asterisk (*) representing substantial changes from the original recommendation made in 2008:

- a. School safety zones should extend a distance of 1000 feet from public school properties, and the Legislature may want to consider extending the same provisions to private schools.
- b. Persons who substantially and materially disrupt school operations or whose presence near the school warrant concern for staff and student safety (based on a reasonable person standard) should be able to be excluded from the public properties of the school safety zone. Include a list of specific criminal acts that warrant exclusion from the school safety zone.*
- c. Exclusion orders should apply to school properties at all times and to areas around the school whenever staff and students are using school facilities.
- d. Allow exclusion for up to 24 hours on a verbal notice, and exclusion for longer periods of time when written notice is made.
- e. Add intentional disruption of school operations to the disorderly conduct statute to address gang problems emanating from private properties near schools.*
- f. Provide an administrative appeal process through the school district prior to any judicial appeal.*
- g. Require that exclusion orders that exceed 24 hours be promptly reported to the local law enforcement agency.
- h. Provide for escalating penalties for subsequent violations of an exclusion order.
- i. Provide that violation of an exclusion order is an exception to the misdemeanor officer presence rule.*
- j. Specify that the provisions of any new section shall not be used to infringe on constitutionally protected rights, including the right to picket.*

4. School District Policies to Prevent Gang Activity

The task force recommends that the Legislature mandate districts adopt a policy to prevent gang activity in school facilities that includes consistent dress codes and uniform disciplinary actions for gang-related behaviors, that declares school facilities to be free of gang activity, and will assist schools in promoting buildings that are free of gang activity.

The work of the task force revealed a great variance in how schools and districts address gangs and gang activity on campus and a lack of consistency in school discipline for gang-related behaviors. The lack of consistent policies and practices raised concerns not only about school safety, but also about student due process rights and may create a perception that inconsistent enforcement of rules contributes to disproportional contact with minority students.

In the process of vetting the recommendations to school principals, the development of standardized anti-gang policies has received widespread support from both school personnel as well as parents and providers that interface with schools on gang discipline issues. Administrators recognize the problems associated with not having a policy, as well as inconsistent policies between districts, and the task force has heard from administrators who characterize their district policies as “vague” and inconsistent.

Establishing board-approved policies and procedures helps ensure consistency and accountability in school districts. Many school districts lack policies that address gang-associated behaviors on campus, and likewise many lack clear written procedures for

discipline of students who engage in gang activity at school. As a consequence, administrators are left to either formulate their own school-based policy, or to try to apply other district discipline policies to gang behaviors. The resultant inconsistencies can lead to multiple problems.

The lack of well-written policies with clear guidelines of prohibited behavior may lead to some administrators imposing discipline in what appears to be an arbitrary or capricious manner. When school officials are left to make ad hoc decisions about what is considered “gang related,” there is increased potential for inconsistent or inequitable application of discipline. One of the legal tests that would find a policy or rule to be unconstitutionally vague is if it allows school officials to make such ad hoc decisions about what is or is not permissible.¹⁰ In *Grayned v. City of Rockford*, the court noted that an unacceptably vague law (and by extension a vague school policy) “... impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis.” In determining whether school gang policies are unacceptably vague, courts have relied on this logic.

As a part of the development of this recommendation, numerous district gang policies and student handbooks were reviewed to evaluate the current status in the state. Most of these policies were enacted in the mid-1990s during the last peak of gang activity, and they reflect the suppression-oriented approach of RCW 28A.600.455 which authorized schools to suspend or expel students who engaged in gang activity on campus. Many of the policies reviewed include language very similar to the statute; however, some are far more general in their prohibition of gang activity—raising concerns of vagueness.

It was noted that broad policy statements such as, “the _____ school district prohibits gang and gang-like activity” are common, and seldom backed up by adequate supporting definitions or procedures. As is common with school district policies, there is remarkable similarity which suggests that policy language was borrowed between districts; however, there is no indication that the Washington State School Directors’ Association ever released a model policy to member districts. One problem noted in these broad statements was that state statute does not authorize discipline for “gang-like” activity, although this language was found rather commonly in district policies; courts have struck down policy language similar to “gang-like” as being overly vague. Another important finding in this review is that many smaller and more rural districts, which were not plagued with gang activity in the 1990s, currently lack any policy that prohibits gang activity, even though many of those districts now must deal with gang issues.

Over the last two decades, the development of anti-gang policies in schools across the country, as well as the implementation of anti-gang ordinances has fueled court challenges of policies and laws. The rulings of state and federal courts provide guidance on the constitutional limitations of school gang policies which should guide the development of school policies in Washington. Most challenges are made on the basis that school gang policies are unacceptably vague or overly broad. In the case of vague policies, there may be a lack of definitions of key terms, or less than adequate notice of what conduct is actually prohibited; most over breadth challenges have alleged infringement of free speech. Court rulings that have found some school policies unacceptably vague or overbroad highlight the need for districts in Washington to update policies or adopt policies that comply with the guidance of the courts.

¹⁰ See *Chalifoux v. New Caney Ind. School District* for discussion.

Because the state of Colorado passed legislation in 2005 requiring schools to enact anti-gang policies, their experience can guide efforts in Washington. The Colorado Attorney General releases an annual guidance document to schools that includes guidelines for developing defensible gang policies.¹¹ Those guidelines are based on the court rulings pertinent to the issue, and include these points:

- Schools should objectively analyze the need for a gang policy.
- Document the need for a restrictive policy.
- Clearly articulate the purpose of the restriction.
- Define all pertinent terms.
- Provide a meaningful due process procedure.
- Maintain sufficient flexibility.
- Maintain neutrality and universal application.

Guidance on school gang policies was developed that follows these recommendations, and which further discusses each of the points. The text of this draft guidance is included in Appendix A, and is provided as an example of the type of guidance that schools may need to consider when drafting anti-gang policies and procedures. This draft guidance informed the task force process in developing recommended legislation requiring school anti-gang policies.

Discussions with students about school policies and practices raise questions about the possibility of disproportional discipline of minority students based on what would appear to some to be profiling. Some students interviewed suggested that a student of color wearing a red shirt would likely be told by administrators that the attire was gang-related, while a white student wearing the same shirt would not be questioned. While there is no data that provides evidence of disproportional discipline for gang-related infractions, anecdotal information and perceptions of parents and students support the need for more clear and consistent school policies around gang issues. The task force has recommended data collection on gang infractions as a part of the legislation drafted (Appendix C) to revise gang definitions for schools and require schools to have gang policies.

5. Funding for Ongoing Anti-Gang Training

The task force recommends ongoing funding of in-state joint training on gang prevention, intervention, and suppression for school personnel, law enforcement, juvenile justice professionals, social services providers, and others who work with gang-involved and gang-affected youth. Such training should be provided at minimal or no cost to the agencies participating, and should be developed by an interdisciplinary team based on an assessment of the needs of agencies and communities in our state.

Gang awareness training for schools in Washington is not consistently available to teachers, counselors, and administrators. This recommendation of the task force is acknowledgment that none of the approaches to reducing gang activity—prevention, intervention, or suppression—can be effective without adequate knowledge of the issue.

¹¹ Colorado Attorney General, *School Violence Prevention Manual 2008*, available at <http://www.ago.state.co.us/schoolvio/svpm2008.pdf>.

Just as school personnel need gang awareness training, so do other providers who work with gang-involved or gang-susceptible youth. Effective prevention and intervention requires that all providers who work with gang-involved youth be on the same page and have comparable knowledge of risk factors, gang indicators, psychosocial elements of gang membership, and intervention methods.

6. Grants for School-Based Gang Prevention and Intervention

The task force recommends the funding of grants to (a) school districts and communities for school-focused gang prevention and intervention programs which embrace a multisystem approach to anti-gang efforts; and (b) projects that adhere to a prescribed model for assessment of gang-involved students, and provide education and intervention services aimed at reintegrating suspended or expelled students into the regular school environment.

The task force finds that to reach the majority of youth at risk for gang involvement, grants or (preferably) *permanent funding* for prevention and intervention services should be made available to school districts or educational service districts (ESDs). The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has developed a Comprehensive Gang Model that recommends prevention as part of a balanced approach to reducing gangs. The authors note that, “schools may be the best resource for gang prevention. Public schools, especially middle schools, are potentially the best community resource for the prevention of and early intervention into youth gang problems. The peak recruitment period for gang members is probably between the 5th and 8th grade, when youth are doing poorly in class and are in danger of dropping out. Most schools, overwhelmed by other concerns, tend to ignore or deny the problem.”¹² The OJJDP model for gang-prevention programs is widely considered one of the most promising practices, and this model is the basis of the gang-prevention and intervention grants proposed by the task force.

Why school-based prevention and intervention? Schools are an effective means to access youth for prevention and intervention programs, and providing gang intervention in connection with the school conveys to the student and parents that the school is a supportive system rather than a punitive system. Additionally, school detachment is an identified risk factor for gang involvement; therefore, it is imperative that any early anti-gang efforts taken by schools strive to protect and strengthen the connection with the school.

The Legislature has previously embraced the concept of prevention and intervention programs to address the involvement of youth with gangs. In the early 1990s, prevention/intervention grants were available to school districts through the state Department of Commerce (formerly CTED). At that time, those programs were conceptualized as “positive prevention and intervention programs for gang members, potential gang members, at-risk youth, and elementary through high school-aged youth.”¹³ As gang issues started to wane in the state, however, so did the availability of grant funding for gang prevention and intervention. This highlights the need for a

¹² Spergel, et al. (1994). p. 10.

¹³ Howell, J.C. (2000).

permanent funding stream for this type of work with at-risk youth—if the allocation of funding is reactive to a resurgence of gang activity, the resulting lag means that program implementation is behind the curve of gang growth.

Because the risk factors that cause youth to gravitate to gangs and other delinquent activity never cease to exist, it is critical for the well-being of our youth that permanent prevention and intervention funding be established. Enacting programs after gang activity begins to rise essentially means the opportunity to intervene with some youth is lost.

7. Development of an Information-Sharing Web site

The task force recommends the development of a secure information-sharing Web site or software system which allows exchange of information about gang activity, identifiers, graffiti, sets, and other pertinent nonpersonal information between law enforcement, school personnel, juvenile justice professionals, and other authorized users. Such a system would support the identification of gang activity rather than the identification of gang members.

Just as school staff need regionally oriented gang training, there is a need for a source of reliable information on local and regional gang activity. Throughout the work of the task force, the need for information on gangs and gang activity was echoed by numerous stakeholders. Although the Internet provides a wealth of information on gangs, it can be difficult and time consuming to locate regional information. Internet information can also be of questionable reliability.

Accessing timely information on gangs is critical to busy administrators and security officers. When confronted with a new set name, a previously unknown tagging, or a suspected gang symbol, principals and school security often need a means to quickly access reliable information. One of the features that has been requested in any information-sharing Web site is a search function that allows the user to search based on symbols, letters, or a combination of features. No system or Web site with these features currently exists that is accessible to school administrators or school security, although school resource officers have access to restricted law enforcement sites. Unfortunately, the majority of schools in the state do not have a school resource officer.

Another requested element of an information-sharing system is a secure means to share information between school staff and law enforcement. A potential means to address this need with existing technology is being piloted in the Tacoma Public Schools. Through the task force process and the School Safety Advisory Committee, the Washington Association of Sheriffs and Police Chiefs has provided school district officials and school resource officers with access to the RISS-ATIX system, which allows secure interchange of information for authorized users. The system is also available to government and municipal employees with similar information needs. The task force will continue to monitor this pilot program and will make a future report on the feasibility of a large-scale use of this system.

The task force was charged with investigating information sharing, and at the end of 2008 tabled the issue of sharing information about specific students identified as gang members or gang associates. This is a topic that continues to challenge the task force. Although there is a definite security purpose behind a “database” of gang members, there is concern about how this information could be used and misused. If a student is determined to be a gang member by a school district and this is entered into the system,

that information would potentially be accessible to other districts and could be used to deny or discourage an application for enrollment. While in some cases the information could serve a security purpose, it could also make it more difficult for a student to enter a new district and leave a gang affiliation behind.

For example, in a recent presentation a conversation about new students with gang history raised the question of how to deal with new resident students who might be gang involved. A school employee commented, "If there is anything in a student's history that says 'gang,' our district just says 'no.'" The task force therefore does not recommend that individual information be maintained in any information-sharing system.

V. Conclusions

As the two previous reports of the Gangs in Schools Task Force noted, the problem of youth gangs is one without a simple or quick solution. Gangs are not a new problem, having been present and active for more than a hundred years in this country. When gang activity increases, it is a symptom of larger societal problems in our country that push our youth toward anti-social and criminal behaviors, including gangs. The definitive treatment for gangs is to address the individual and societal issues that push our children and youth to the brink of hopelessness and a point where gangs become an attractive alternative.

The Gangs in Schools Task Force was specifically charged with addressing the problems associated with youth and adult gangs in and around schools. However, the task force repeatedly returned to the position that addressing the problem of youth gangs requires essentially the same actions as addressing the overall needs of at-risk youth. The state must ensure that a comprehensive and coordinated system of intervention services is available for at-risk youth, combined with educational opportunities that meet the needs of this segment of the youth population.

The task force has made seven prioritized recommendations to the Legislature, which represent a balanced approach to addressing gang issues in schools through prevention, intervention, suppression, and reentry programs. The highest prioritized recommendation being a dedicated apportionment for transition programs because the task force continues to recognize the importance of educational services for students who are suspended or expelled for gang activity.

The members of the executive steering committee of the Gangs in Schools Task Force thank the Legislature for the opportunity to work on this critical issue.

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VII. Appendices

Appendix A:

Guidance on the Development of School Gang Policies

July 2009

Many school districts in Washington State have adopted policies that prohibit gang activity and clothing in schools. Most of these policies were developed and implemented in the mid-1990s. Since that time, however, considerable case law has been established around school gang policies and dress codes. In some cases, courts have held that school policies were unconstitutionally vague or overbroad. Although none of the cases on point are binding in Washington, they serve as examples of how courts may evaluate school gang policies and provide guidance on the development of policies that will likely survive a challenge on constitutional grounds. Citations for some example cases are included at the end of this document.

The Colorado Attorney General has provided guidance for the development of school gang policies consistent with recent case law (available at <http://www.ago.state.co.us/schoolvio/svpm2008.pdf>).

OSPI recommends that school districts consider these guidelines when developing gang policies:

1. Schools should objectively analyze the need for a gang policy.

If there is no demonstrable need for a restrictive policy (e.g., no gang problem in the community or school), then a restriction is vulnerable to a constitutional challenge because there is no compelling government interest. If school officials, however, can reasonably foresee disruption or potential violence, adopting a policy is defensible. The crucial factor is the ability to demonstrate a legitimate need for the restriction that is reasonably related to the educational mission of schools.

2. Document the need for a restrictive policy.

Any violent or disruptive incidents caused in whole or part by the display of gang symbols should be recorded, as should reports of intimidation, threats, or distraction from educational goals. Gang incidents in neighboring districts and communities may be compelling if there is evidence that the mobility of gangs could jeopardize student safety in your school district. (See discussion in *BWA v. Farmington Ind. SD*, citing *Tinker* and *Barr* among others.)

3. Clearly articulate the purpose of the restriction.

State clearly that the purpose of the restriction is to maintain the educational mission of the school by eliminating substantial distractions and ensuring the security of the students and staff.

4. Define all pertinent terms.

Words and phrases such as “gang,” “gang symbol,” “gang color,” “gang sign,” or “gang activity” must be defined or the policy is vulnerable to a claim of vagueness because parents and students must guess at its meaning, and because school officials can enforce it in an arbitrary fashion. Washington statute (RCW 28A.455.600) defines the elements for a group to be a gang, but does not define “gang member” or “gang activity.” These terms should be defined narrowly to avoid challenges.

(See discussion in *Stephenson v. Davenport CSD* and *Chalifoux v. New Caney Ind. SD*.)

5. Provide a meaningful due process procedure.

Distribute a copy of the policy or rules to all students, parents, and staff before it is ever enforced. Students should receive an informal warning before any suspension or other disciplinary action is taken, except for exceptional misconduct that would otherwise result in suspension/expulsion. If a warning about a specific type of dress or item has not been communicated, discipline should not be imposed. Because many gang symbols may also be associated with religions or cultures, or may be worn for reasons other than gang association, a student should be given the opportunity to demonstrate the display did not qualify as a gang symbol and thereby purge pending discipline.

(See discussions in *Chalifoux v. New Caney Ind. SD* and *Doe v. Schenectady Central SD* relating to particularized message.)

6. Maintain sufficient flexibility.

Gang symbols and attire change over time, and therefore any policy must be capable of adapting to these changes. A policy should have a provision for annual or more frequent updates based on documented incidents and input of local experts including law enforcement; avoid ad hoc administrator judgments as to what is and is not gang-associated attire. Consider keeping an updated list on the school Web site, and announce any new prohibitions to parents and students.

(See *Chalifoux v. New Caney Ind. SD*, wherein the court opined that maintaining a list of prohibitions is not unduly burdensome. See also *Stephenson v. Davenport CSD*, wherein the court addresses ad hoc judgments, citing *Grayned v. City of Rockford*.)

7. Maintain neutrality and universal application.

Any restriction should avoid targeting only gangs of a particular type, or from a particular neighborhood, or comprised of members of a particular ethnic group or culture; use caution that policies apply to traditional gangs as well as gang-like groups (i.e., hybrid gangs and extremist groups). It is important that gang policies do not target certain styles that may be popular with a certain culture or other protected class just because the style isn't appreciated or understood by school officials. An effective and neutral way to address attire is with a required school uniform. Policies and prohibitions should be universally applied to all students, not only stereotypical gang members.

Some Example Cases:

Stephenson v. Davenport Community School District (8th U.S. Circuit, 1997)
Chalifoux v. New Caney Independent School District (U.S. District Ct. for Southern Texas, 1997)
Jane Doe v. Schenectady Central School District (U.S. District Ct. for New York, 2006)
Barr v. Lafon (6th U.S. Circuit, 2008)
Copper v. Dellinger (N. Carolina Court of Appeals, 2008)
BWA v. Farmington School District (8th U.S. Circuit, 2009)
Grayned v. City of Rockford (U.S. Supreme Court, 1972)

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Appendix B:

School Safety Zone Proposed Legislation Work in progress for discussion purposes – draft as of December 15, 2009

AN ACT Relating to school safety zones; amending RCW 28A.635.020, 28A.635.030, and 9A.84.030; adding a new section to chapter 28A.635 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1.1. RCW 28A.635.020 and 1997 c 266 s 6 are each amended to read as follows:

(1) It shall be unlawful for any person to willfully disobey the order of the chief administrative officer of a public school district, or of an authorized designee of any such administrator, to leave any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district if the person so ordered is under the influence of alcohol or drugs, or is committing, threatens to imminently commit or incites another to imminently commit any act which would materially disturb or interfere with or obstruct any lawful task, function, process or procedure of the school district or any lawful task, function, process or procedure of any student, official, employee or invitee of the school district. The order of a school officer or designee acting pursuant to this subsection shall be valid if the officer or designee reasonably believes a person ordered to leave is under the influence of alcohol or drugs, is committing acts, or is creating a disturbance as provided in this subsection.

~~(2) ((It shall be unlawful for any person to refuse to leave public property immediately adjacent to a building,~~

~~grounds or property which is owned, operated or controlled by a school district when ordered to do so by a law enforcement officer if such person is engaging in conduct which creates a substantial risk of causing injury to any person, or substantial harm to property, or such conduct amounts to disorderly conduct under RCW 9A.84.030.~~

~~(3))~~ Nothing in this section shall be construed to prohibit or penalize activity consisting of the lawful exercise of freedom of speech, freedom of press and the right to peaceably assemble and petition the government for a redress of grievances: PROVIDED, That such activity neither does or threatens imminently to materially disturb or interfere with or obstruct any lawful task, function, process or procedure of the school district, or any lawful task, function, process or procedure of any student, official, employee or invitee of the school district: PROVIDED FURTHER, That such activity is not conducted in violation of a prohibition or limitation lawfully imposed by the school district upon entry or use of any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district.

~~((4))~~ (3) Any person guilty of violating this section shall be deemed guilty of a gross misdemeanor punishable as provided in chapter 9A.20 RCW.

Sec. 1.2. RCW 28A.635.030 and 1984 c 258 s 315 are each amended to read as follows:

Any person who shall willfully create a disturbance on school premises during school hours or at school activities or school meetings shall be guilty of a misdemeanor, ~~((the penalty for which shall be a fine in any sum not more than fifty dollars))~~ punishable as provided in RCW 9A.20.021.

Sec. 1.3. RCW 9A.84.030 and 2007 c 2 s 1 are each amended to read as follows:

(1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally disrupts any school operations or school activity without lawful authority;

(d) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

~~((d))~~ (e)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1) ~~((d))~~ (e) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(2) Disorderly conduct is a misdemeanor, punishable as provided in RCW 9A.20.021.

NEW SECTION. **Sec. 1.4.** A new section is added to chapter 28A.635 RCW to read as follows:

(1) The legislature recognizes that gang activity and other criminal activity in the vicinity of and on school campuses interferes with the safe and orderly operation of public and private schools and the educational rights of the children of the state. For the purpose of promoting the safety of students and staff in the schools of the state and the orderly operation of schools, the legislature intends to designate school properties and adjacent areas as school safety zones.

(2) School safety zones are inclusive of all areas within a one thousand-foot radius of any public school facility while that facility is being used by students or school staff, and all school properties at all times.

(a) For the purposes of this section, "school properties" includes all real properties owned, operated, or under the control of any school district, and any vehicle owned or operated by a school district; and

(b) Those portions of the properties of any community or technical college or educational service district that are used to provide educational services to students in kindergarten through grade twelve.

(3) Except as provided in subsections (6) and (7) of this section, it is unlawful for any person to remain on or return to public properties or spaces within a school safety zone or to enter any school properties:

(a) After being properly notified by any authorized school administrator, designee, or law enforcement officer that there is probable cause that the person's activities or conduct within the school safety zone constitute a violation of one or more of the following, whether or not the violation results in arrest, citation, or prosecution:

(i) Disorderly conduct under RCW 9A.84.030 or the local county or municipal code;

(ii) Malicious harassment under RCW 9A.36.080, when the harassment is aimed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(iii) Harassment under RCW 9A.46.020, when the harassment is aimed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(iv) Stalking under RCW 9A.46.110 when the stalking is aimed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(v) Criminal gang intimidation under RCW 9A.46.120;

(vi) Malicious mischief under chapter 9A.48 RCW, when the crime is committed against a student or staff member's property, affects school property, or impairs school operations;

(vii) Criminal street gang tagging and graffiti under RCW 9A.48.105;

(viii) Criminal trespass under chapter 9A.52 RCW, when the trespass occurs on school property including school vehicles;

(ix) Threat to bomb or injure property under RCW 9.61.160, when the threat is made against any school building or property, or the property of any school employee, student, volunteer, or person contracted to the school district, when the threat is reasonably related to that person's legitimate school business;

(x) Delivery or possession with intent to deliver a controlled substance under chapter 69.50 RCW;

(xi) Illegal possession of any dangerous weapon under RCW 9.41.250;

(xii) Unlawful display of a weapon under RCW 9.41.270 when the violation places school employees, students,

volunteers, persons under contract to the school district, or visitors at risk of harm;

(xiii) Illegal possession of a firearm or dangerous weapon on school property under RCW 9.41.280;

(xiv) Any other violation of chapter 9.41 RCW not otherwise enumerated in this section;

(xv) Any violent offense as defined in RCW 9.94A.030, when that offense is directed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(xvi) Disturbing school, school activities, or meetings as prohibited under RCW 28A.635.020;

(xvii) Interfering with any administrator, teacher, classified employee, or student by threat of force or violence under RCW 28A.635.100;

(xviii) Intimidating any administrator, teacher, classified employee, or student by threat of force or violence under RCW 28A.635.100;

(xix) Reckless driving as defined under RCW 46.61.500 when the act endangers school employees, students, volunteers, persons under contract to the school district, or visitors or when the act threatens to or causes significant damage to school property; or

(xx) The distribution or delivery of any substance, item, or material to any minor student when possession of that substance, item, or material by the recipient student is prohibited by any state or federal law;

(b) After being properly notified by an authorized school administrator, designee, or law enforcement officer that:

(i) The person's presence and willful conduct are causing a substantial and material disruption of the educational process; or

(ii) The person's conduct creates a substantial risk of injury to any person or substantial harm to property;

(c) If the person has been convicted of any of the following, if the person is notified by the convicting court or the person's probation or parole officer of the requirement to be excluded from the school safety zones:

(i) Criminal gang intimidation under RCW 9A.46.120;

(ii) Illegal possession of a firearm or dangerous weapon on school property under RCW 9.41.280;

(iii) Threat to bomb or injure property under RCW 9.61.160 when that offense was directed at any school building or property or the property of any school employee, volunteer, person contracted to the school district, or student;

(iv) Delivery or possession with intent to deliver a controlled substance under chapter 69.50 RCW;

(v) Any violent offense as defined in RCW 9.94A.030 when the offense was directed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(vi) Any serious violent felony offense as defined in RCW 9.94A.030, when the offense was directed at any school employee, volunteer, student, person contracted to the school district, or visitor;

(vii) Any criminal street gang-related offense, as defined in RCW 9.94A.030, if the offense either occurred within a school safety zone or was directed at a school employee, student, volunteer, person contracted to the school district, or visitor while engaged in school business or under circumstances where it is reasonable to conclude that the offense was connected to legitimate school business.

(4)(a) Persons required to be excluded from a school safety zone under subsection (3) of this section are not

subject to enforcement action unless they have received prior notice in accordance with this section and reasonable opportunity to vacate the area.

(b) A person may be excluded from a school safety zone for a period not to exceed twenty-four hours by verbal notice from an authorized school administrator, designee, or law enforcement officer. Verbal notice must include the reason for the exclusion, the duration of the exclusion, and the penalty for failure to comply.

(c)(i) Notice of exclusion from a school safety zone for periods in excess of twenty-four hours is not enforceable unless it is delivered in writing to the subject or delivery has been attempted and documented as provided in this subsection (4)(c).

(ii) In the case of an exclusion exceeding twenty-four hours, written notice must include the reason for the exclusion, the duration and effective hours of the exclusion imposed, details of permissible presence in the school safety zone or on school property, the penalty for violation of the exclusion order, and the means of appealing the exclusion.

(iii) The recipient of the notice under this subsection (4)(c) must acknowledge receipt by his or her signature on the exclusion order and must receive the original copy at the time of notice.

(iv) If the subject under this subsection (4)(c) refuses delivery or signature, an exclusion order showing attempted delivery confirmed by two witnesses carries the same weight as an exclusion order executed with the signature of the subject.

(v) Exclusion notices imposed under this subsection (4)(c) must be reported to the local law enforcement agency as soon as reasonably possible, but in no case more than forty-eight hours after delivery to the subject.

(5) (a) A person excluded from a school safety zone under subsection (3) of this section may request an appeal hearing with the school district superintendent or the superintendent's designated hearing officer to have the exclusion notice rescinded, the period shortened, or the provisions of the exclusion modified.

(b) Notice of appeal must be made in writing unless the superintendent waives this requirement.

(c) An appeal hearing under this subsection (5) must be held within fifteen business days of notice of appeal unless the appellant waives this requirement.

(d) Either party may call and cross-examine witnesses, produce documents, or introduce other evidence. Any written material to be introduced must be made available to the opposing party at least twenty-four hours before the scheduled hearing time.

(e) The superintendent or designated hearing officer shall determine whether a preponderance of the evidence supports excluding the appellant under subsection (3) of this section.

(f) The superintendent or designated hearing officer shall issue a written decision within three business days of the conclusion of the appeal hearing, to be delivered by certified mail to the subject of the exclusion.

(g) The decision of the superintendent or designated hearing officer is final. An appellant may seek judicial review of the decision by filing a writ of review in superior court.

(h) The exclusion order shall remain in full effect during the pendency of any administrative or judicial proceeding.

(6) (a) A violation of an exclusion order under subsection (3) of this section is a gross misdemeanor, punishable as provided in RCW 9A.20.021.

(b) A person who violates an exclusion order issued under subsection (3) of this section and who is found to be illegally in possession of any firearm defined in chapter 9.41 RCW or in illegal possession of a dangerous weapon as provided under RCW 9.41.250 is guilty of a class C felony.

(7) Violations under this section are an exception to the misdemeanor officer presence rule when there is reliable evidence that a violation of an exclusion order has occurred.

(8) This section does not preclude or prohibit prosecution under any other provision of law.

(9) (a) It shall be an affirmative defense to a prosecution brought under this section that a person who violates an exclusion order issued under subsection (3):

(i) Was present in a school safety zone for a lawful purpose reasonably requiring his the person's presence at that time and location, including legitimate business on school grounds, required commercial business, legitimate employment, or business with a government agency located within the school safety zone;

(ii) Was occupying private properties in the school safety zone as an owner or tenant or being present on private properties within a school safety zone when reasonably required for a lawful purpose at that time and location, and the person was in compliance with all pertinent laws; or

(iii) Was transiting through a school safety zone on a public thoroughfare while on legitimate business as described in (a) (i) and (ii) of this subsection and there was no other reasonable route of travel, and the person followed the most direct route through the school safety zone.

(b) Persons subject to an exclusion order but permitted to be in a school safety zone under (a) of this subsection:

(i) May not loiter on public properties within a school safety zone or purposely interact with staff, students, or visitors of a school except when specifically required by legitimate school business; and

(ii) among the circumstances which may be considered in determining whether the person is present in a school safety zone for a lawful purpose is the fact that the person takes flight upon appearance of a law enforcement officer, school administrator, or designee, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to explain how the person's presence in the exclusion zone is for a lawful purpose by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true.

(10) This section does not prohibit any person under an exclusion order issued pursuant to subsection (3) of this section from being present on school property for legitimate purposes if the person has the prior express permission of the principal or other authorized school administrator. The parent or legal guardian of a student enrolled in a school shall be assumed to have permission to be on school grounds if he or she has been summoned to the school for a disciplinary incident, medical emergency, scheduled meeting, or family emergency.

(11) This section may not be used to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly, or to prohibit any lawful act, including picketing, strikes, or collective bargaining, nor may this section be used to exclude a person from public properties in a school safety zone on the basis of only his or her physical appearance.

NEW SECTION. **Sec. 1.5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Appendix C:

Gang Policy and Discipline Proposed Legislation Work in progress for discussion purposes – Draft as of December 15, 2009

AN ACT Relating to gang activity on school grounds and at school activities; amending RCW 28A.600.455 and 28A.225.225; and adding a new section to chapter 28A.635 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1.6. RCW 28A.600.455 and 1997 c 266 s 2 are each amended to read as follows:

(1) A student who is enrolled in a public school or an alternative school may be suspended or expelled, consistent with other laws and rules, if the student is a member or associate of a criminal street gang and knowingly engages in gang activity on school grounds or while engaged in any school-sponsored activity.

(2) (~~("Gang" means a group which: (a) Consists of three or more persons; (b) has identifiable leadership; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.)~~) The superintendent of public instruction, in consultation with the task force on gangs in schools and the school safety advisory committee, may adopt rules pertaining to the discipline of students for gang-related behavior. Such rules shall include, but not be limited to, reasonable standards establishing a student as a gang member or associate, specific definitions of conduct considered gang activity, limits on disciplinary exclusions from school, and reporting. The superintendent of public instruction shall provide guidance to districts on the application and limitations of discipline imposed under this

section, and shall thereafter update such guidance as necessary.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide organizations or their members or agents.

(b) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(c) "Gang activity" means any act that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(i) To gain admission, prestige, or promotion within the gang;

(ii) To increase or maintain the gang's size, prestige, dominance, or control in any geographical area;

(iii) To exact revenge or retribution for the gang or any member of the gang;

(iv) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(v) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(vi) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

NEW SECTION. **Sec. 1.7.** A new section is added to chapter 28A.635 RCW to read as follows:

(1) The legislature finds that gang activity on school grounds and at school activities places staff and students at risk of intimidation and violence, can create a hostile school atmosphere, and interferes with the educational mission of schools. The legislature further finds that gang activity has spread from urban areas to suburban and rural areas of the state, and that because of the highly mobile nature of modern gangs, no region is immune to the effects of criminal gang activity. It is the intent of the legislature that the schools of the state will be free of the negative influences of criminal street gangs, and that all schools will have consistent policies and procedures to address gang issues.

(2) By September 1, 2011, the board of directors of each school district shall enact an anti-gang policy or modify an existing policy to be consistent with the requirements in this section. The policy must prohibit criminal street gang activity on school property and school vehicles, and at all school activities, and must outline a procedure that

implements the policy in a manner consistent with all pertinent statutes, rules, and any guidance provided by the superintendent of public instruction.

(3) The anti-gang policy and associated procedure of each district shall, at a minimum, include:

(a) A statement that gang activity is prohibited on school properties and at school events for the purpose of promoting safety and the educational mission;

(b) Definitions of all terms, including "criminal street gang," "gang member or associate," and "gang activity" consistent with the definitions in RCW 28A.600.455;

(c) Specific guidelines to be used for determining if a student meets the definition of a gang member or associate for the purpose of disciplinary action, and an avenue for a student to appeal that determination or have it later removed from his or her record;

(d) A provision that no student may be disciplined for gang activity unless the student knowingly violates the policy or published rules, and methods by which parents and students are notified of what specific clothing, symbols, gestures, or other activity are deemed by the school district to be gang related; and

(e) An outline of progressive discipline steps for violations of the policy, including appropriate interventions other than suspension for first infractions, except in the case of exceptional misconduct.

(4) The Washington state school directors' association and the office of superintendent of public instruction, in collaboration with the task force on gangs in schools and other stakeholders, shall develop and disseminate to school districts a model policy and procedure by January 1, 2011.

Sec. 1.8. RCW 28A.225.225 and 2009 c 380 s 7 are each amended to read as follows:

(1) Except for students who reside out-of-state and students under RCW 28A.225.217, a district shall accept applications from nonresident students who are the children of full-time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned;

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned; or

(c) At a school in the district that provides early intervention services pursuant to RCW 28A.155.065 or preschool services pursuant to RCW 28A.155.070, if the student is eligible for such services.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or criminal street gang (~~(membership)~~) activity;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants; or

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling.

(3) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or criminal street gang (~~(membership)~~) activity; or

(c) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (3)(c) must apply uniformly to both resident and nonresident applicants.

(4) For purposes of subsections (2)(a) and (3)(b) of this section, (~~("gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes)~~) "criminal street gang member" and "criminal street gang activity" have the definitions in RCW 28A.600.455.

~~((4))~~ (5) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3).

NEW SECTION. **Sec. 1.9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Appendix D:

Example of a Metric for Determining Gang Membership

Note: This metric is currently being used by a school district in Washington State. It is included here as an example of current policy and practice, not as a model intended to be implemented or recommended. This metric may or may not comply with the standards established by RCW 28A.455.600.

One indicator from List A must be present in order to designate an individual as a gang member.

List A:

1. The person admits or asserts membership in a criminal street gang to law enforcement.
2. The person participates in a criminal gang initiation, ritual, or ceremony.
3. The person conspires to commit or commits a crime:
 - ✓ Which is part of a pattern of street crimes facilitated by the efforts of other gang members or associates which advance the interest of the person. OR
 - ✓ To attract the attention of the criminal gang or enhance the standing of the person with the criminal gang. OR
 - ✓ For the benefit of the gang. OR
 - ✓ To announce the existence of the gang, its membership, or its territorial claims. OR
 - ✓ In response to the race, color, religion, sexual preference, national origin, or gang association of the victim.

Two indicators from List B must be present in order to designate an individual as a gang member.

List B:

1. The person displays knowledge of the gang's history, leadership, activities, or rituals in a context which clearly indicates affiliation with the gang.
2. The person announces to the police that the person is willing to commit assaults, other crimes, or make other sacrifices for the gang.
3. The person wears clothes or jewelry unique to a gang in a context which clearly indicates membership in the gang.
4. The person uses a hand sign or language which, due to the content or context, clearly indicates affiliation with the gang.
5. The person's name appears on a criminal street gang document.
6. The person is in a photograph with other people who collectively display gang signs or apparel to exhibit solidarity.
7. A Confidential Reliable Informant identifies the person as a member of a gang.
8. The person possesses a gang tattoo.

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