



YARMUTH WILSDON PLLC

**INVESTIGATIVE REPORT
RE: GARFIELD HIGH SCHOOL
CHOIR FIELD TRIP TO
NEW ORLEANS**

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MEMORANDUM

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TO: Geoffrey D. Miller, Director Labor & Employee Relations,
Human Resources, Seattle Public Schools

Sue Means, Manager, Human Resources,
Seattle Public Schools

FROM: Carl Blackstone

DATE: April 28, 2015

RE: Garfield High School Choir Field Trip To New Orleans

I. ALLEGED VIOLATIONS

In March 2015, the Garfield High School (“GHS”) Choir went on a five-day field trip to New Orleans. During that field trip **student 1** a choir student, subjected two female students to repeated acts of inappropriate sexual touching. Carol Burton, the Garfield teacher in charge of the field trip, learned of **student 1** improper behavior on the last day of the field trip. She notified Garfield’s principal, Ted Howard, who promptly investigated the matter and concluded that **student 1** had engaged in improper behavior. **student 1** was placed on an emergency expulsion and then suspended from Garfield for the remainder of the school year. GHS also notified the Seattle Police Department of the incident.

During the course of Mr. Howard’s investigation, **student 1** alleged that Ms. Burton and a chaperone consumed alcohol during the field trip and that there was a “relaxed” atmosphere during the field trip. Upon learning of these new allegations, Seattle Public Schools (“SPS”) retained the Yarmuth Wilsdon law firm to investigate these new allegations.¹ Part I of this report contains investigative findings relating to these issues.

SPS also requested that Yarmuth Wilsdon investigate whether **student 1** had engaged in inappropriate conduct with any Garfield student prior to the field trip. Additionally, during the course of this investigation, issues emerged concerning SPS and Garfield’s knowledge of and response to **student 1** prior disciplinary history at a private school, as well as the appropriateness of his participation in the field trip. Part II of this report contains investigative findings relating to these issues.

¹ On March 17, 2015, SPS placed Carol Burton on paid administrative leave pending the completion of the District’s investigation. (Notice attached hereto as Exhibit 1)

II. APPLICABLE RULES AND POLICIES

All SPS rules and policies apply on field trips. There are several SPS rules and policies applicable to this matter. SPS Policy No. 5201, “Drug-Free Schools, Community & Workplace,” provides that chaperones and teachers are prohibited from consuming, using or being under the influence of alcohol during a field trip. Consistent with this policy, all chaperones are required to sign a form titled “Seattle Public Schools Guidelines for Volunteer Chaperones Overnight Field Trips” pursuant to which chaperones agree not to “use, sell, provide, possess, or be under the influence of . . . alcohol” during a field trip. A teacher who uses, consumes, or is under the influence of alcohol, on a field trip engages in “unprofessional conduct” in violation of SPS Policy No. 5006 and is subject to discipline.

The Garfield Field Trip Behavior Contract provides that “[m]embers of the opposite sex are not allowed into each other’s rooms at any time.” SPS Policy No. 5006 provides that it is “unprofessional conduct” for a teacher to disregard “generally recognized professional standards . . . in the course of supervising students.”

Garfield students on field trips must also comply with the “Basic Rules of Seattle Public Schools – Code of Prohibited Conduct.” A student who violates any of these rules is subject to discipline. Section E-215 of the Code prohibits students from engaging in Sexual Assault. Section E-920 prohibits students from engaging in “lewd conduct” which includes “indecent exposure.” Section D-120 of the Code prohibits a student from “breaking a specific, published school rule.”

Finally, SPS Policy No. 5281 provides that SPS staff are subject to discipline for “failing to fulfill their job responsibilities,” “violating District policies, guidelines or workplace rules,” and for “unprofessional conduct [as] defined in SPS Policy No. 5006.”

III. INVESTIGATIVE FINDINGS²

PART I: Issues Relating to Garfield Choir Field Trip to New Orleans

A. Carol Burton

Carol Burton has worked as a teacher at Garfield High School (“GHS”) for approximately 14 years. She has served as the GHS Choir Director during that entire period. She currently supervises three choirs consisting of approximately 60 students. By all indications, Ms. Burton appears to be a very dedicated and respected teacher. Every student I interviewed described her as a good teacher. Several said Ms. Burton was the best teacher they had ever had.

² In conducting the investigation, I interviewed Carol Burton, student 1, eight other students (student 2, student 3, student 4, student 5, student 6, student 7, student 8, and student 9), and seven chaperones (Jackie Bryan, John Funderburk, Carla Lawrence, Robin McCain, Mary Meullion, Jackie Morgan, and Aaron Wheatman). One chaperone, Melicent Whinston, declined my request for an interview. Instead, her attorney provided a written summary of her testimony which is attached hereto as Exhibits 16 and 17. I also interviewed Ted Howard, GHS principal, Janet Manuel, GHS Acting Assistant Principal, Brad Westering, GHS Assistant Principal, Meghan Griffin, GHS Assistant principal and Beryl Miller, SPS Behavioral & Emotional Team Supervisor Coordinated School Health.

Likewise, all of the chaperones on the New Orleans field trip, several of whom are parents of GHS choir students, had high praise for Ms. Burton's teaching abilities and ability to connect with her students. The students and chaperones all expressed the strong desire that Ms. Burton be allowed to return to GHS to continue as the Choir Director.

On April 14, 2015, I interviewed Carol Burton, who was represented by two attorneys, Kevin Peck and Gene Bolin. Ms. Burton was quite cooperative throughout the approximately three-hour interview and expressed a strong desire to return to GHS as soon as possible. As will be explained more fully below, Ms. Burton admitted that she and other chaperones consumed alcohol during the New Orleans field trip. She also admitted that she permitted male and female students to be in each other's rooms during the field trip. On April 17, 2015, Ms. Burton's attorneys submitted a seven page letter on her behalf. I have attached a copy of that letter to this report as Exhibit 2.

B. Prior Choir Field Trips

Ms. Burton stated that she has taken the GHS Choir on a number of overnight field trips to various cities throughout the United States and that on several of these trips students had behaved inappropriately. According to Ms. Burton, during a 2008 or 2009 field trip to Reno a couple of students were smoking marijuana on the last night of the trip. Although they were not arrested, the police scared the students. Ms. Burton said she notified GHS officials of this incident, which resulted in the students being suspended.

During a choir field trip to New York City in 2010, a student was arrested for buying marijuana in Central Park. Ms. Burton said that the student was sent home. She notified GHS officials of the incident, which resulted in the student's suspension. Finally, Ms. Burton said that during last year's field trip to New York City, a student was arrested for placing graffiti on a building. She reported the matter to GHS officials; she did not know if any discipline was imposed.

C. Events leading up to the New Orleans Field Trip

Beginning in the fall of 2014, Carol Burton and other parents began to plan a choir field trip to New Orleans. On October 31, 2014, Ms. Burton submitted an "Overnight Field Trip Request Form" to GHS principal Howard, requesting permission to take GHS choir students and chaperones to New Orleans in March 2015. On November 3, 2014, Mr. Howard approved the request.

Thereafter, planning began in earnest. Eight adults volunteered to be chaperones on the trip. Five of the chaperones were parents of students going on the trip and one chaperone was a grandparent of a student.³ Each chaperone completed and signed all of the necessary forms to become a volunteer and underwent a criminal background check.

³ The eight chaperones were: Jackie Bryan (parent), John Funderburk (parent), Carla Lawrence (parent), Robin McCain, Mary Meullion (parent), Jackie Morgan (grandparent), Aaron Wheetman and Melicent Whinston (parent).

Each chaperone was provided a form titled, “Seattle Public Schools Guidelines for Volunteer Chaperones Overnight Field Trip,” which stated in part that:

1. All school rules apply on District-sponsored events;
2. [The Chaperone was] familiar with Seattle Public School’s Code of Conduct;
3. Chaperones may not use, possess, or be under the influence of alcohol;
4. Student behavior is [the chaperone’s] responsibility, and
5. Night-time supervision can present different challenges. Chaperones . . . must ensure that students are in their rooms and not engaged in prohibited activities. This will generally mean a bed check at lights out and at least one additional check during the night.

Each chaperone signed and dated these Guidelines and in doing so “acknowledged. . . [they had] read these guidelines, and agree to comply with the guidelines as a school volunteer.” (Attached as Exhibit 3 are the Guidelines signed by each of the chaperones).

Each student who was planning to go on the field trip and his or her parent(s) had to sign the following forms.

1. **Parent/Guardian Authorization for Overnight Field Trip;**
2. **Seattle Public Schools Field Trip Behavior and Expectations Agreement** pursuant to which the student agrees to follow the Basic Rules of Seattle Public Schools while on the field trip and understands that he or she may be disciplined for violating any of those rules; and
3. **Garfield Field Trip Behavior Contract** pursuant to which the student and parent acknowledged that “Members of the opposite sex are not allowed into each other’s rooms at ANY time.”

(These three forms are attached as Exhibits 4 through 6).

All of the students who signed up to go on the field trip were subjected to a background check. It was not clear who conducted this background check at GHS. It was either done by Janet Manuel, who was the acting Assistant Principal during the fall of 2014, or Meghan Griffin, GHS assistant principal who returned to GHS following maternity leave in January 2015. Neither one can remember if they actually performed the background check⁴. However, they both indicated that they would have followed the same procedure. They would have been provided with a list of all the students who were planning to go on the field trip. They would

⁴ Ms. Burton recalled that Janet Manuel performed the background checks and advised Ms. Burton that all of the students had been cleared to go on the field trip.

have then run each student's name through an SPS database called "Power Schools," which contains a myriad of information about each student, including disciplinary information. If PowerSchools reflected that a student had been subjected to serious discipline involving drugs, alcohol, violence, or sexual harassment, they would have notified the teacher and Mr. Howard of the information. GHS officials would have decided whether the student would be allowed to go on the field trip.

student 1 was one of the students who applied to go on the field trip. He is 17 years old and had completed his first two years of high school at **identifier** High School. In June 2014, **student 1** was expelled from **identifier**. He then transferred to GHS in the fall of 2014. Although at least two SPS district employees were aware of **student 1** expulsion, that information was not included in PowerSchools or provided to GHS officials. Consequently, **student 1** and all of the other students were cleared to go on the field trip. Part II of this report will address in much greater detail circumstances surrounding **student 1** expulsion and SPS's response to the expulsion.

Prior to the field trip there were several planning and logistical meetings involving students, parents, chaperones, and Ms. Burton. One of the issues, that came up during these meetings, was how the chaperones were going to ensure that male and female students did not go into each other's rooms. One parent suggested putting tape on the students' hotel room doors at night to deter students from going into each other's rooms after curfew. Parents and students did not agree as to whether this proposal was acceptable. Once in New Orleans, the chaperones and Ms. Burton decided not to place tape on students' doors.

On March 2, 2015, in the final pre-trip meeting of the parents, students, chaperones and Ms. Burton, Ms. Burton reviewed with the group what was expected of the students on the trip, and reviewed conduct that was prohibited by various forms, (Exhibits 5 and 6), the students had previously signed.

At that meeting and on other occasions, Ms. Burton emphasized that it was important for the students to be on their best behavior during the field trip. She expressed her concern that any problems on the field trip might well jeopardize future trips, since SPS field trips were being subjected to heightened scrutiny. As a result of an incident occurring on a 2012 GHS field trip that exposed SPS to significant legal expense, SPS updated its field trip procedures and increased training for staff to help ensure student safety.

D. The Field Trip

The field trip took place between March 11, 2015, and March 15, 2015, and included 49 people from Garfield, including Carol Burton, eight chaperones, the husband of the lead chaperone⁵, and 39 students. (A list of all students on the trip, and their respective chaperones is attached hereto as Exhibit 7). All of the students, chaperones, and Ms. Burton stayed at the Embassy Suites Hotel in New Orleans, which is within walking distance of the French Quarter.

⁵ Robert Bryan, who is the husband of lead chaperone, Jackie Bryan, arrived in New Orleans on Thursday March 12 and stayed for the remainder of the field trip. Although he was qualified to serve as a chaperone, Mr. Bryan did not have any formal chaperone responsibilities during the trip.

The group occupied 15 hotel rooms, 12 of which were on the fifth floor and three of which were on the seventh floor. Each student room housed at least four students and a couple of rooms had five students. Each chaperone room housed two chaperones and the chaperone rooms were interspersed among the student rooms. Ms. Burton shared a room with her wife, Robin McCain. (Attached as Exhibit 8 is a list of the hotel rooms occupied by the students and chaperones).

Student safety is of paramount concern on field trips (SPS Administrative Procedure 2320A and Exhibit 3). The teacher leading the field trip is ultimately responsible for ensuring the safety and welfare of all students on a field trip. Adult chaperones report to the teacher and are responsible for supervising students at all times during the field trip. During the field trip each chaperone was responsible for supervising between three to five students. Curfew was initially set for 11 p.m. but Ms. Burton and the chaperones changed it to midnight. The chaperones, including Ms. Burton, were responsible for enforcing the curfew on the students who were staying in rooms adjacent to or near the rooms occupied by the chaperones.

E. Problems on the Field Trip

1. Inappropriate Behavior by student 1

Prior to this investigation, GHS Principal Howard and his three assistant principals, Lenora Lee, Brad Westering and Meghan Griffin, conducted an investigation into allegations relating to student 1 conduct during the New Orleans field trip. That investigation revealed that during the field trip student 1 inappropriately touched two female students, student 9 and student 8 (student 1 inappropriately touched two female students, student 9 and student 8). He repeatedly touched their breasts and buttocks in public and also while he was in their rooms prior to curfew. student 1 and the two girls were clothed at the time of the inappropriate touching. On one occasion, student 1 came into student 8 room and attempted to lie on top of her. In trying to get student 1 off of her, student 8 fell off the bed. On another occasion, which also took place in student 8's room, student 1 climbed on top of student 9 and tried to get between her legs. Two other girls who were also staying in student 8's room saw student 1 touch student 9's and student 8's breasts and legs. They also saw him get on top of student 8 and student 9. Although student 9 and student 8 told student 1 not to touch them, he persisted. student 1 justified his touching by stating to the girls that he was student 1.

Although both student 9 and student 8 denied that they had initiated any inappropriate contact with student 1, student 9 admitted both to GHS officials and to me, that on the last night of the field trip (March 14) she went out on the balcony of her hotel room and "flashed" her breasts "for only a second" at a nearby building. student 9 also said that student 1 was in her room at the time of this incident but that she initially thought he was standing behind her when she flashed her breasts. After the flashing student 9 realized that student 1 was standing next to her and he commented that she had "nice boobs."

On Sunday March 15, 2015, during the bus ride to the New Orleans airport, student 9 said that student 1 touched her inner thigh.⁶ By this point student 9 and student 8 felt as though they were unable to stop student 1 behavior. They did not want to tell Ms. Burton or the other chaperones

⁶ During my interview of student 1 he denied that he touched student 9's inner thigh. He said that it was possible he touched her outer thigh.

about **student 1** conduct because they were afraid this would get Ms. Burton in trouble⁷ and might jeopardize future field trips. Instead, once at the airport, they told **student 10**, a student section leader, about **student 1** inappropriate behavior. **student 9** and **student 8** were hoping that **student 10** would talk to **student 1** and thus, get him to stop harassing them. **student 9** and **student 8** did not want **student 10** to tell Ms. Burton what had happened.

student 10 did tell Ms. Burton about what he had learned from **student 9** and **student 8**. This was the first time that Ms. Burton was aware of **student 1** inappropriate behavior. Ms. Burton talked with the two girls and comforted them at the New Orleans airport. She also asked the girls why they had not reported **student 1** earlier.⁸ They told her that they were afraid to report the matter because they did not want to jeopardize future field trips. According to Ms. Burton the girls also told her that they did not think **student 1** behavior was a big deal and that they thought they could deal with it.

After talking to the girls, Ms. Burton notified several of the chaperones of what she had learned and she ensured that a male chaperone was seated next to **student 1** during the return flight. Once the group arrived back in Seattle, Ms. Burton met **student 9**'s father and told him about the incident. **student 8** requested that Ms. Burton not talk to her mother at the airport. Ms. Burton honored this request but stayed with **student 8** until she was in the custody of her mother. Ms. Burton also sent a text message to GHS Principal Mr. Howard stating that she needed to meet with him the next morning.

2. Post-Trip Actions

On Monday morning, March 16, Ms. Burton met with Mr. Howard and advised him of the incident involving **student 1**, **student 9**, and **student 8**.⁹ Mr. Howard and his assistant principals then conducted an investigation, which consisted of interviewing and obtaining written statements from **student 2**, **student 7**, **student 8** and **student 9**. (Written Statements attached as Exhibits 10 through 13). On March 17, 2015, Mr. Howard and Assistant Principal Brad Westering interviewed **student 1** who was accompanied by his mother, **parent**. During the interview **student 1** admitted that he had inappropriately touched **student 8** and **student 9**, but he also said that **student 9** and **student 8** touched "his ass and hit his arm as well." He further claimed that **student 9** flashed people on the street from the balcony of her hotel room. **student 1** provided a written statement admitting that:

Over the course of a few days on the New Orleans choir trip, I, **student 1**,
student 1, harassed 2 girls. With no sexual intent, I touched their boobs

⁷ **student 8** told GHS Assistant Principals Lenora Lee and Meghan Griffin that she did not report the incident earlier because she was afraid that Ms. Burton would get in trouble for bending the rules. When **student 8** was asked what rule, she said "boys and girls in same room."

⁸ A couple of the chaperones expressed some frustration that neither **student 9** nor **student 8** ever told them about **student 1** behavior. One chaperone, Mary Meullion, said that at one point she was alone with **student 8** and asked her how she was doing on the trip. **student 8** responded that everything was fine. Ms. Meullion felt that **student 8** should have told her about **student 1** improper conduct.

⁹ Ms. Burton also provided Mr. Howard with a written summary of the incident, which is attached hereto as Exhibit 9.

and butts in playful manner and they did the same to me. I initiated it too often and made them feel uncomfortable with the frequency of it. It happened in the girls' hotel room during free time and when we had time walking around. They did not express that it was uncomfortable until the last day at which I then stopped.¹⁰

(student 1 Incident Statement attached hereto as Exhibit 14).

As a result of this investigation, GHS issued an emergency expulsion to student 1 from March 16 through March 27, 2015, and then he was placed on long-term suspension until June 15, 2015. (Notice of Disciplinary Action attached hereto as Exhibit 15). Garfield has advised me that student 1 and his mother did not appeal the suspension and student 1 is now enrolled in the identifier School.¹¹

GHS also notified the Seattle Police Department ("SPD") of student 1 conduct. GHS Assistant Principal Lenora Lee has advised that SPD has referred the matter to the New Orleans Police Department for investigation.

During his interview with Mr. Howard, student 1 raised several other issues. He claimed that Ms. Burton and an adult chaperone had been drinking alcohol during the field trip. He also claimed that it was a very "relaxed" atmosphere during the field trip and that boys and girls were able to meet in each other's rooms.

3. Violation of the No-Visitation Rule

As noted, each student and his or her parent signed a Garfield Field Trip Behavior Contract acknowledging that "members of the opposite sex are not allowed into each others' rooms at ANY time." (Exhibit 6 and hereafter referred to as the "no-visitation rule"). All of the chaperones and Ms. Burton were aware of this rule and aware of their responsibility to enforce it.

a. Ms. Burton Left the Impression that the No-Visitation Rule Did Not Apply Before Curfew.

The investigation has revealed pervasive violations of the no-visitation rule. Ms. Burton bears primary responsibility for these violations. All of the students I interviewed, with one exception, stated that Ms. Burton had either explicitly or implicitly permitted male and female students to be in each other's rooms prior to curfew. Three students, student 2, student 4, and student 7, each stated that when they were checking in to the Embassy Suites hotel on Wednesday afternoon, March 11, 2015, they heard Ms. Burton say that it would be permissible for male and female students to be in each other's rooms prior to curfew. According to student 4

¹⁰ During his interview, student 1 reiterated that neither student 9 or student 8 complained about his touching until the last day of the field trip. He denied getting on top of either student 9 or student 8. He did say that he "jumped" next to student 8 on her bed and this caused her to fall off the bed.

¹¹ student 1 and his mother confirmed that they had not appealed the disciplinary action. student 1 also said that at present he did not intend to re-apply to GHS in the fall.

student 4, two of the chaperones, Jackie Bryan and Melicent Whinston,¹² expressed some concerns about Ms. Burton's statement.

student 9 said she did not hear Ms. Burton say that male and female students could go into each other's rooms. However, it appeared to **student 9** that Ms. Burton knew it was happening and just looked the other way based on her statement "I trust you guys." **student 5** was not sure if she heard Ms. Burton directly say that male and female students could go into each other's room prior to curfew, but she got the impression from other students that it was permissible. She did recall that Ms. Burton said "don't do anything stupid and we will be ok." **student 8** said she never heard Ms. Burton state that male and female students could be in each other's rooms, but her friend told her that Ms. Burton had said it was permitted prior to curfew. **student 3** never heard Ms. Burton say that male and female students could be in each other's rooms, however, she "kind of understood" it was permissible because they had been able to visit each others' rooms on past field trips. **student 1** said that he did not hear Ms. Burton say that it was permissible for male and female students to be in each other's rooms. However, he was confident that she knew this was happening and did nothing to stop it.

student 6 was the only student I interviewed who said she never heard or saw anything that would have led her to believe that Ms. Burton had permitted male and female students to be in each other's rooms. However, she did admit that it would not surprise her if male and female students had gone into each other's rooms during the field trip.

b. Students Reported Visiting Each Other's Rooms

All of the students, except for **student 6**, admitted that they had been in hotel rooms with members of the opposite sex. **student 4** said he saw boys go into girls' rooms and that he also went into girls' rooms. He said that once during the middle of the day, he and three other boys went into **student 3** room to play cards. **student 4** said that chaperones "knew we were in there." He specifically identified chaperone Jackie Bryan as having seen him in **student 3** room and stated that she did nothing to stop it.

student 3, who shared a room with **student 9**, said that **student 1** came into their room. She also said that on several occasions during the field trip she went into boys' rooms to play cards and listen to music.

It is also clear that **student 1** spent significant time in a room occupied by five girls (**student 2**, **student 5**, **student 7**, **student 8** and **student 11**.) Four of these five girls¹³ admitted that **student 1** was frequently in their room. **student 5** said that **student 1** was in their room every night for most of the evenings until curfew. She said that **student 1** was in their room because he did not like the boys in his room. Three of the girls said that several of the chaperones had seen **student 1** in their room and did not make him leave prior to curfew. **student 2** said that Ms. Burton and chaperones Robin McCain, Jackie Bryan, and Carla Lawrence all saw **student 1** in her room and did not make him leave until curfew. **student 5** said that chaperone, Carla

¹² Ms. Whinston, through her attorney, and Ms. Bryan denied hearing Ms. Burton make this statement.

¹³ I did not interview **student 11**.

Lawrence, had seen student 1 in their room on one occasion and did not make him leave the room. student 8 said that chaperone, Robin McCain, saw student 1 in their room and did not say anything.

student 9 said that student 1 was also in her room. She said that chaperone, Carla Lawrence, saw student 1 in her room and did not tell him to leave the room.

student 1 also admitted that he was frequently in these girls' rooms and also in student 9's room. student 1 said that several chaperones saw him in these rooms and none of them told him to leave the room.

c. Ms. Burton and Chaperones Admitted Not Enforcing the No-Visitation Rule

Ms. Burton admitted that she had not enforced the rule preventing male and female students from being in each other's rooms prior to curfew but denied that she told the students during check-in that it was permissible. While she recalled that, during check-in, she reminded everyone of the strict no-visitation (at any time) rule, she later admitted that she "may" have told the students later in the trip that it was permissible for male and female students to be in each other's rooms prior to curfew. She admitted that students could have easily gotten the impression that it was permissible for them to be in rooms occupied by members of the opposite sex prior to curfew.

Ms. Burton explained that her reason for not enforcing the rule was because she felt it was "discriminatory." She stated that there were four identifier students and one identifier student on the field trip and that the SPS rule would not preclude these students from being in the rooms of other same-sex students. As a result, she felt that the SPS rule discriminated against heterosexual students and that she tried to enforce the rule with the greatest respect for the students. Ms. Burton admitted that she did not raise this concern with any GHS or SPS District official, before or after the field trip.

Ms. Burton also admitted that she knew that student 1 was spending time in a hotel room occupied by student 2, student 8, student 9, and student 7. She said that one evening at curfew time she saw student 1 in their room, and she did not reprimand him or tell him that he should not be in their room. She said she permitted student 1 to be in the girls' room because she knew he was uncomfortable being in his own room because he identifier.¹⁴ Ms. Burton also said on another occasion student student 12 was not in his room at curfew. She texted him and asked where he was. student 12 responded that he was talking to student 3. Although Ms. Burton did not see student 12 in student 3's room, she assumes that he was in her room.

Four chaperones admitted they were aware male and female students were in each other's rooms and that they took no action to prevent the mixing. Robin McCain chaperoned student 1, student 9, student 2, student 7 and student 8. She said that student 1 who claimed to identifier, was having some difficulty with his male roommates. She said that student 1 felt more comfortable associating with student 9, student 2, student 7 and student 8. student 2, student 7 and student 8 were staying in one hotel room and student 9, who spent much of her time in this room, was staying in another room.

¹⁴ student 1 told me that he did not feel uncomfortable with the other male students in his hotel room.

One evening, Ms. McCain went to check the room occupied by student 2, student 7 and student 8 and found student 1 in their room watching TV. She did not see anything inappropriate and did not make student 1 leave the room. Ms. McCain said she told Ms. Burton and Jackie Bryan that student 1 was in the girls' room and she let him stay because he was more comfortable associating with the girls. Ms. McCain said that Ms. Burton and Ms. Bryan felt that this was an appropriate accommodation. Ms. McCain further stated that she never saw any other boys or girls in each other's rooms and never heard Ms. Burton say it was permissible for boys and girls to be in each other's rooms.

Lead chaperone, Jackie Bryan, admitted that, on two occasions, she saw student 1 in a hotel room with student 9, student 8, and sometimes with student 7 and student 11. She first saw student 1 in the girls' room at curfew and he was in the living room area of the room. She told student 1 to leave the room because it was curfew. She did not reprimand student 1 or tell him that he could not be in the girls' room at any time. The second time she saw student 1 in the girls' room was around 11 p.m., and she did not make him leave the room because she knew he was going to be leaving shortly for curfew. Ms. Bryan stated that it "did not occur" to her to make student 1 leave the room.

Chaperone, Aaron Wheatman, stated that, on two occasions, he saw boys and girls together in the same hotel room on the fifth floor. On one occasion he walked by a room and heard a lot of noise. He knocked on the door and when the door opened he saw about 10 students, some boys but mostly girls, playing cards and appearing to be having a good time. Mr. Wheatman told them to be quieter and left the room. Although he knew that male and female students were not supposed to be in each others' rooms he saw nothing improper and wanted to give the students a little "flexibility." He felt that by allowing the male and female students to be together he was showing them some respect, and felt in turn they would not abuse the respect he was showing them.

Although chaperone, Melicent Whinston, denied my request for an interview, her attorney, Michael Nance, provided a letter on Ms. Whinston's behalf stating,

Although official school policy prohibited boys and girls from mixing at any time in private hotel rooms, this was practically difficult to enforce and not strictly observed. The students freely mixed and mingled at the rehearsal room, at meals and on excursions during all hours of the day. Mixing in their rooms seemed a simple extension of that and no more risky, especially given their busy schedules and the periodic safety checks done by the chaperones. The midnight curfew was strictly enforced and, to Ms. Whinston's knowledge, never violated.

(Exhibit 16).

In a subsequent e-mail, Ms. Whinston's attorney provided the following additional information:

Shortly after arriving at the hotel, Ms. Whinston learned from student 1 that he was having difficulty getting along with some of his

assigned male roommates. She thought he **identifier** and that he appeared to be more comfortable in the company of girls (**student 9**, **student 8** and **student 7**) assigned to room 527, which was next door to her own room. On several nights, prior to curfew, she observed **student 1** sitting in room 527 with these girls. Since everyone appeared comfortable and content, she did not ask him to leave but reminded him to be out of their room prior to curfew and later confirmed that he had complied.

Although she did not actually observe it, she assumed that other students went into opposite-gender rooms but does not recall ever discussing the matter with other chaperones. The chaperones were under a general directive to report any problems or difficulties to Carol Burton, but Ms. Whinston had no cause to do so nor was she aware of other problems that she felt needed to be reported. She does not know what Ms. Burton knew about girl/boy mixing.

(Exhibit 17).

Chaperone, Carla Lawrence, denied that she had seen students of the opposite sex in each other's room, a statement hard to square with the fact that **student 2**, **student 5**, and **student 9** said that Ms. Lawrence came into their room and saw **student 1** there and did nothing about it.

Three of the chaperones, John Funderburk, Mary Meullion and Jackie Morgan, denied that they had ever seen girls and boys together in each other's rooms. Mr. Funderburk said that he spent most evenings in the lobby and was not in his room. Ms. Morgan also said that she was not in her room much and did not patrol the hallway. It is somewhat surprising that none of these chaperones either observed or heard that male and female students were in each others' rooms. Nonetheless, I did not uncover any evidence indicating that these three chaperones were not truthful. Moreover, none of the students I interviewed indicated that any of these three chaperones had actually seen male and female students in each other's rooms.

4. Consumption of Alcohol by Chaperones and Ms. Burton

Prior to the field trip each chaperone agreed to abide by the Chaperone Guidelines, (Exhibit 3), which explicitly prohibited the chaperone from consuming alcohol during the field trip. Ms. Burton was also aware she was prohibited from drinking on the field trip. Nonetheless, it is clear that Ms. Burton and all of the chaperones, except Mary Meullion,¹⁵ consumed alcohol during the field trip.

a. Alcohol Consumption During Nightly Chaperone Meetings

Each evening between approximately 10:30 and 11 p.m. Ms. Burton and all of the chaperones would meet to review the events of the day and plan for the next day in a bar located in the lobby of the Embassy Suites. During these nightly meetings many of the chaperones and Ms. Burton consumed alcohol.

¹⁵ Mary Meullion said that she did not drink at all during the field trip. Several of the chaperones confirmed that Ms. Meullion did not drink on the trip, and I obtained no evidence indicating otherwise.

Ms. Burton stated that around 10 or 10:30 p.m. on their first night in New Orleans she came down to the lobby for the chaperone meeting. When she entered the bar she saw that the chaperones had ordered a round of drinks. She said she just stared at them because in her mind they had “crossed the line.” She did not say anything to the chaperones, even though she knew they should not be drinking. After joining the group, Ms. Burton admitted that she consumed “one cocktail.” Ms. Burton explained that she felt that she was in a difficult position because each chaperone had paid \$1,800 to travel to New Orleans and each donated a lot of time and energy to the field trip. Given this, she did not feel comfortable telling the chaperones not to drink.

Ms. Burton said that the chaperones met on Thursday, Friday, and Saturday evening. She said that all of the chaperones, except Mary Meullion were drinking during those meetings. She said that she consumed one cocktail during the Thursday night meeting but that she did not drink during either the Friday or Saturday night meetings.

Six of the eight chaperones admitted that they had consumed alcohol during these meetings. Lead chaperone, Jackie Bryan, admitted that she had a glass of wine during some of these meetings. Chaperone, John Funderburk, admitted that he had a drink every night during these meetings. He said that the bar closed at 11 p.m. so the chaperones only had time to order one drink.

Chaperone, Jackie Morgan, admitted that she had a glass of wine during the meetings. Chaperone, Robin McCain, admitted that she drank alcohol during three of the four chaperone meetings. Chaperone, Aaron Wheatman, admitted that he consumed alcohol during the evening chaperone meetings. Mr. Wheatman said on one occasion he bought Ms. Burton a glass of wine.

Chaperone, Melicent Whinston, through her attorney admitted:

On a least a couple of evenings Ms. Whinston and . . . most of the chaperones had a drink in the lobby in the late evening. One exception was Mary [Meullion], who was apparently a non-drinker. Carol Burton attended these meetings although she usually left early. Ms. Whinston assumed Ms. Burton drank (she saw her with a glass of liquid) but did not hear her order and cannot say for certain that her drink contained alcohol. At no time did Ms. Whinston ever observe any noticeable impairment in Ms. Burton.

(Exhibit 16 at page 2; Exhibit 17 at pages 1-2).

Chaperone, Carla Lawrence, was represented by an attorney during our interview. Ms. Lawrence, on advice of counsel, refused to answer the question of whether she had consumed any alcohol during the field trip. She also refused to answer, again on advice of counsel, the question of whether she had seen any of the other chaperones or Ms. Burton drink alcohol during the field trip. The evidence indicates that Ms. Lawrence did consume alcohol during one or more of these meetings. John Funderburk said that Ms. Lawrence drank alcohol during one or more of the meetings. Although the other chaperones could not specifically recall if Ms. Lawrence was drinking, the general consensus was that everyone, except Mary Meullion,

was drinking. It is also appropriate to draw an adverse inference from Ms. Lawrence's refusal to answer the question of whether she was drinking.

Ms. Burton and the chaperones all said that the drinking at these meetings occurred outside the presence of the students and that everyone drank in moderation. They all said that no one was intoxicated and they all felt that they were able to carry out their responsibilities towards the students. As discussed more fully below, with the exception of chaperone, Melicent Whinston, the investigation uncovered no evidence that consumption of alcohol precluded Ms. Burton or the other chaperones from carrying out their duties.

b. Alcohol Consumption Aboard The Steamboat Natchez

On Saturday evening, March 14, all of the Garfield students, seven chaperones,¹⁶ and Ms. Burton boarded the Steamboat Natchez and spent three hours aboard the boat eating dinner and touring the Mississippi River. During dinner the chaperones and Ms. Burton were eating at separate tables from the students. Chaperone, John Funderburk, admitted that he and Robert Bryan ordered three bottles of wine for the chaperones and Ms. Burton. Mr. Funderburk said that he and the other adults at his table each had a glass of wine and then the bottles were passed to the other chaperones and to Ms. Burton who were seated at other tables. Mr. Funderburk assumed that the other chaperones and Ms. Burton drank wine, but he did not see them do so. He did comment that the wine bottles "came back empty."

Ms. Burton admitted that she was given a glass of wine but she said she only had one or two sips of wine. Chaperone, Robin McCain, admitted that she drank only a sip of wine. Chaperone, Aaron Wheatman, also confirmed that Mr. Funderburk had purchased three bottles of wine for the group. Mr. Wheatman said that he and Jackie Morgan were sitting at a table next to Mr. Funderburk. He said that Mr. Funderburk sent two glasses of wine over to Mr. Wheatman and Jackie Morgan. Mr. Wheatman said that he drank the glass of wine but could not recall if Ms. Morgan drank her glass. Chaperone, Jackie Morgan, admitted that she had a glass of wine with her dinner. Chaperone Jackie Bryan, admitted that she and her husband each had a glass of wine with dinner.

Chaperone, Melicent Whinston, through her attorney Michael Nance, stated that "During dinner [on the Steamboat Natchez] several chaperones drank glasses of red wine with dinner. Ms. Whinston drank two glasses." Ms. Whinston's attorney further stated that "wine bottles were placed on the chaperones' table, and they were each free to pour their own glass. Ms. Whinston did so and thought most everyone else did, too. She did not directly observe Carol Burton drinking wine." (Exhibit 17 at page 2).

Following dinner, the students, the chaperones, and Ms. Burton were free to walk around the boat. There was a bar on the boat. One student, **student 4**, said that he saw Ms. Burton on the top deck of the boat drinking a beer. He said that she was not drunk and that she appeared to be fine. Another student, **student 3**, also saw Ms. Burton on the top deck. Although she did not see Ms. Burton drinking, she said Ms. Burton appeared to have had "one drink" and that

¹⁶ One chaperone, Mary Meullion, had another engagement and did not go on the steamboat trip. Jackie Bryan's husband, Robert Bryan, was also on the boat trip.

Ms. Burton was laughing a lot and acting a little “goofy.” Based on a dare from other students, student 3 asked Ms. Burton to dance with her. Ms. Burton agreed, and they danced a polka on the deck. student 9 said she saw Ms. Burton on the top deck and said that Ms. Burton seemed like she was drunk. student 1 said that he saw Ms. Burton drinking after dinner and she was acting “odd” and stumbling. Although student 1 could not say whether Ms. Burton was drinking alcohol, he commented that “if it was iced tea or water she must have been hypoglycemic or something.” None of the other students I interviewed either saw Ms. Burton drink or believed she had been drinking.

Ms. Burton denied that she had anything to drink after dinner. She expressly denied that she was drinking a beer on the upper deck. None of the chaperones said that they had seen Ms. Burton drink after dinner.

Chaperone, Melicent Whinston, again through her attorney, admitted that after dinner “she ordered and drank a Sazerac, a New Orleans specialty drink that contained more alcohol than she realized. It happened that she had previously ingested a dose of Naprosin, an anti-inflammatory medication for her back. About the time the group assembled for the half-mile walk back to the hotel from the river dock, the effects of the alcohol hit her quickly and unexpectedly. She became unsteady on her feet and felt unbalanced. As the group walked back toward the hotel, Ms. Whinston had to be assisted by two of her fellow chaperones. She has little memory of this.” (Exhibit 16 at page 2).

Ms. Whinston’s statement is consistent with what I learned during the investigation. Several students stated that Ms. Whinston appeared drunk on the boat, describing her as being unsteady on her feet and slurring her speech. Although, Ms. Burton said that she was not aware that Ms. Whinston was intoxicated during the boat trip, she did notice that when they were getting off the boat, Ms. Whinston appeared to be inebriated. Ms. Burton was “alarmed” and “irritated.” Ms. Whinston claimed that her impaired state was the result of her having taken a back pain pill. Ms. Burton, Ms. McCain, and Mr. Funderburk then had to escort Ms. Whinston back to the hotel because she was having trouble standing up. Once at the hotel, Ms. Burton asked chaperone, Carla Lawrence, to escort Ms. Whinston back to her hotel room.

c. Other Instances of Alcohol Consumption

Chaperone, Melicent Whinston, through her attorney, admitted to consuming alcohol on one other occasion during the field trip. As her attorney wrote:

On Saturday (March 15) she accompanied several students (not including student 1) to lunch at a crowded downtown restaurant where only counter service was available, and she sat in a counter position not directly facing the students. She noticed other adult patrons drinking beer from a non-descript container that resembled a Sprite soda can and discreetly ordered one for herself, which she consumed with her meal.

(Exhibit 16 at page 2).

One of the students who was at this lunch had a slightly different version of the events. **student 5** said that on Saturday afternoon she went to Café du Monde with two other students, **student 11** and **student 13**, and two chaperones, Melicent Whinston and Carla Lawrence. According to **student 5**, Ms. Whinston went inside the restaurant and ordered a beer, which she brought outside and drank at the table where **student 5** and the others were seated. **student 5** said Ms. Whinston acknowledged that she was not supposed to drink on the field trip, but that it was “ok “because the real concern was that students not drink alcohol.

5. Allegation of Improper Contact between a Chaperone and **student 1**

student 1 alleged that on Saturday night, following the boat trip, he returned to the hotel and was in the hotel room occupied by **student 2**, **student 8**, **student 7**, **student 5**, and **student 11**. He said that he left the room and went into the hallway. **student 1** could not recall why he went into the hallway. Once in the hallway, he said that he saw Melicent Whinston walking in a drunken manner. He said that Ms. Whinston slapped him on the butt without saying anything and then walked to her room. **student 1** then returned to the girls’ room and told Ms. Whinston’s daughter, **student 11**, that her mother had just slapped him on the butt. **student 11** apologized to **student 1** and left her room to confront her mother.

student 1 further claimed that Ms. Whinston apologized to him the next morning. **student 1** told her that he forgave her and said “let’s move on with the day.” Several students also told me that they had heard Ms. Whinston apologize to **student 1**

Ms. Whinston, through her attorney, has no memory of doing anything inappropriate to **student 1**. As her attorney wrote:

Ms. Whinston did not recall seeing **student 1** [on Saturday night] but strongly doubted that even an inadvertent touching was possible (since she was accompanied at all times by a responsible adult). She was nonetheless deeply bothered by the allegation and sought out **student 1** to tell him, in the presence of others, that she was sorry if she had done or said anything that made him feel uncomfortable. Privately, Ms. Whinston thought the very idea of her having had any physical contact with this boy preposterous.

(Exhibit 16 at page 3).

Two of the chaperones were quite adamant that Ms. Whinston had not had any inappropriate contact with **student 1**. John Funderburk said that he accompanied Ms. Whinston from the boat to the hotel and at no time did she have any contact with **student 1**. Carla Lawrence said that she accompanied Ms. Whinston from the hotel lobby to her room and she said there was no contact with **student 1**. Moreover, neither Ms. Burton, the other chaperones or students I interviewed observed any contact, let alone improper contact, between Ms. Whinston and **student 1**.

PART II: Issues Relating to student 1 Disciplinary History and Inappropriate Behavior Before the New Orleans Field Trip

A. student 1 Expulsion from identifier High School

On April 21, 2015, I interviewed student 1 who was accompanied by his mother, parent . student 1 who is 17, was very cooperative during the interview which lasted approximately one hour. He spent his first two years of high school at identifier High School (identifier) and admitted he had been expelled from identifier in June 2014 because of something to do with his refusal to let identifier officials search his phone for inappropriate pictures. He admitted he had been disciplined for inappropriate behavior on a identifier field trip.¹⁷ His mother explained that in the spring of 2014, student 1 had been accused of inappropriately touching another male student on a identifier field trip to New Orleans. student 1 agreed he had touched the boy but that his touching was not inappropriate. identifier suspended student 1 and he was not allowed to go on any overnight field trips. student 1 did not challenge his suspension. parent said that this suspension formed the “backdrop” for student 1 expulsion from identifier which she also attributed to photos on his phone.

After being expelled from identifier student 1 applied to attend the Seattle Public Schools. His mother said that she had submitted an Admission Form to SPS on which she disclosed that student 1 had been expelled from identifier. After submitting this form, she received a call from Beryl Miller, who she thought worked for Safety and Security for SPS. parent told Ms. Miller the circumstances surrounding student 1 expulsion, including the fact that he had inappropriately touched another student on a field trip. Ms. Miller asked parent for permission to contact student 1 doctor and psychologist, with whom she then discussed student 1 circumstances and treatment. As a result of this conversation, she decided not to put any restrictions on student 1 attendance at GHS.

B. SPS Knowledge of and Response to student 1 Expulsion

The circumstances surrounding student 1 transfer to GHS was news—to me and to GHS. Principal Howard had been unaware of the reasons for student 1 expulsion.¹⁸ According to Mr. Howard, he thought identifier would not share discipline information about its students with SPS. After hearing from parent however, I focused my investigation on determining whether employees in the district office or GHS were aware of student 1 expulsion. My investigation revealed that on June 6, 2014, student 1 submitted an Admission Form to the SPS District Office, on which it was disclosed that he had been “expelled from identifier for ‘inappropriate conduct.’ No violent conduct. No drug use.” (Admission Form attached hereto as Exhibit 18). Helen Lozan, SPS Enrollment Specialist was responsible for processing student 1 Admission form. On June 13, 2014, Ms. Lozan e-mailed identifier requesting “any information

¹⁷ I asked this question because during my April 14 interview of Ms. Burton she told me that she had learned from a colleague at identifier that student 1 had been expelled from identifier for engaging in inappropriate touching on a field trip. Ms. Burton learned this information after returning from the New Orleans field trip.

¹⁸ Ms. Burton’s lawyers in their April 17 letter (Exhibit 2) raised concerns about whether SPS and GHS were aware of student 1 expulsion. They also suggested that I review student 1 Admission Form to SPS to determine if it contained any information about his expulsion.

that you can share with me regarding [student 1] expulsion.” (E-mail attached hereto as Exhibit 19). On that same day a [identifier] official responded to Ms. Lozan: “[student 1] was expelled for sexual harassment. [student 1] was placed on probation on May 8, 2014 for inappropriate advances toward another [identifier] student. He broke probation by harassing other students by making inappropriate comments which made those students uncomfortable.” (Exhibit 19). SPS also provided me with handwritten notes which appear to memorialize a conversation between an SPS employee¹⁹ and a [identifier] official. Those notes state:

Building houses in New Orleans with the boy, wanting to take shower with another boy. Making advances at a boy. Principal went thru Ipad saw pictures of sexual orientations – telling girls how fine they looked in a dress, the girls feel very uncomfortable, and reported him – he was put on probation, but broke probation and was put back on expulsion.

(Notes attached hereto as Exhibit 20).

On June 17, 2014, Ms. Lozan contacted Beryl Miller, who serves as the SPS Behavioral and Emotional Support Team Supervisor, and advised her that [student 1] had been assigned to Garfield High School (E-mail attached hereto as Exhibit 21). I interviewed Ms. Miller on April 22, 2015. She told me that she had contacted [identifier] to learn more information about [student 1] expulsion and thought that she had talked to [identifier], Dean of Students, at [identifier]. Ms. Miller said that he told her that [student 1] had made inappropriate remarks to another student on a [identifier] Field Trip. As a result, he was placed on a safety plan. His expulsion resulted from his failure to comply with the safety plan by refusing to allow [identifier] to search his phone for inappropriate photos.

[identifier] also provided Ms. Miller with a letter dated June 5, 2014, from the [identifier] Principal to [student 1] mother notifying her of [student 1] suspension. That letter stated in part:

Due to a series of serious actions occurring during the New Orleans service trip (April 21-26, 2014), [student 1] was given a number of conditions for his continued enrollment at [identifier] on May 8, 2014. His actions on the trip included violations of the school’s harassment policy. The scope of [student 1] actions during this trip allowed for the possibility of his dismissal from [identifier] at that time. Instead, a series of conditions were implemented for his continued enrollment.

However, on June 5, 2014, several student complaints about [student 1] came to the attention of the Counselor, Dean of Students and the Principal. The complaints involved similar harassing incidents by [student 1] towards several students. When we questioned [student 1] specifically about these complaints, he initially admitted them, but refused to provide any details or context to them. He also refused to allow the contents of his cell phone to be reviewed for reported photos. In addition, a review of his iPod

¹⁹ My assumption is that these notes were prepared by Helen Lozan but I have been unable to interview Ms. Lozan because she out of the office until May 22, 2015.

revealed a number of sexually inappropriate text entries by **student 1** some occurring recently during the school day.

Since the complaints are viewed as involving student safety and **student 1** refused to comply with our request to investigate the matter, the school has no recourse other than to dismiss **student 1** immediately.

Additionally, there is evidence that **student 1** willingly violated the terms of his continued enrollment, having engaged in behavior similar to those that occurred in the initial series of incidents on the service trip.

(Letter attached hereto as Exhibit 22). **identifier** also provided Ms. Miller with a copy of the safety plan dated May 8, 2014, which specifically prohibited **student 1** from participating in any “overnight school events.” **identifier** Safety Plan attached hereto as Exhibit 23).

Ms. Miller also obtained a release from **student 1** mother to contact **student 1** doctors.²⁰ Ms. Miller told me that she talked to one of **student 1** doctors who told her that his behavior on the **identifier** field trip resulted from the fact that he was not taking his medication for **RCW 42.56.360(2)**. Ms. Miller said that the doctor told her that **student 1** was on new medication and, as a result, he felt there was no cause for concern that **student 1** would act inappropriately in the future. Ms. Miller apparently also talked to **student 1** other doctor.

Ms. Miller then sent an e-mail²¹ to **parent** stating:

I spoke with **RCW 42.56.360(2)** this morning and based on the information I received from him and **RCW 42.56.360(2)** I will not be putting any restrictions on **student 1** enrollment in the Seattle Public Schools. I thank you for being so forthcoming and understanding my position and the need for due diligence.

(E-mail attached hereto as Exhibit 25).

Ms. Miller admitted that she did not notify anyone at SPS or GHS as to what she had learned about **student 1** expulsion from **identifier**. Nor did she provide SPS or GHS with copies of the documents she had received from **identifier**. She kept the documents and information to herself. She said that the reason she did not share this information with SPS or GHS was because **student 1** doctor had assured her that his behavior on the **identifier** field trip was an isolated incident which would not likely occur again because of the new medication **student 1** was taking.

SPS maintains a district-wide database called PowerSchools. This database contains a variety of information about each student attending SPS, including disciplinary information.

²⁰ Attached hereto as Exhibit 24 are a series of e-mails between Ms. Miller and **parent**

²¹ The e-mail is undated but I believe it was sent towards the end of June or early July, 2014.

Ms. Miller admitted that she did not input or direct anyone else to input information into PowerSchools regarding **student 1** expulsion from **identifier** or the reasons for it. At my request, Ms. Miller searched **student 1** record in PowerSchools and confirmed that there is no such information in his record.

GHS Principal Ted Howard and Assistant Principals Brad Westering and Meghan Griffin all told me that Beryl Miller should have notified GHS of the information she had regarding **student 1**. According to Ms. Griffin, Ms. Miller had assisted GHS in structuring safety plans for students and that she has provided information to GHS regarding safety concerns posed by certain students. She mentioned that Ms. Miller had provided court-ordered safety plans regarding students. Both Mr. Westering and Ms. Griffin were adamant that Ms. Miller should have provided GHS with the information regarding **student 1** expulsion from **identifier**.

It does not appear that either Carol Burton or other GHS staff were even aware that **student 1** had been expelled from **identifier**. GHS maintained a paper file on **student 1**. On April 20, 2015, I reviewed the file and determined that on June 24, 2014, GHS had sent a “Request for Student Records” to **identifier** for a variety of records relating to **student 1** including his “official transcript” and “discipline record.” (Request for Student Records attached hereto as Exhibit 26). **identifier** did provide GHS with a copy of **student 1** Official Transcript, but I found no **identifier** discipline records in the file. (Transcript attached hereto as Exhibit 27). The **identifier** Official Transcript does reflect that **student 1** was “expelled” from **identifier**. However, it is important to note that the word “expelled” is not prominently displayed on the transcript and could easily be overlooked.

Assistant GHS Principal Brad Westering, advised that PowerSchools should contain all discipline information for a student. He and Mr. Howard said that because the district was responsible for handling **student 1** enrollment and was clearly aware of his disciplinary record, the district office should have inputted this information into PowerSchools. Mr. Westering also said that he is personally aware that PowerSchools does contain discipline information regarding students who transfer to SPS from other districts. He was adamant that **student 1** discipline history and expulsion from **identifier** should have been included in PowerSchools. As a result, when GHS conducted a background check on **student 1** prior to the field trip there was nothing in PowerSchools to reflect that he had been the subject of discipline.

Mr. Westering and Mr. Howard said that, had GHS known about **student 1** expulsion, GHS would have likely opposed his transfer to GHS, and at the very least GHS would have imposed conditions on **student 1** to protect the safety of other students—including denying him permission to go on the New Orleans field trip.²³

²² Ms. Miller did say that PowerSchools contained information relating to **student 1** recent suspension from GHS.

²³ Ms. Burton’s lawyers also claimed that, had she known of **student 1** suspension, **student 1** “very likely would not have been permitted to go on the field trip to New Orleans. And even if Ms. Burton had permitted **student 1** to go on the trip, she would have had very serious discussions with him first, to satisfy herself that he would strictly conform to the behavior expected of all students on the trip. He also would have been much more closely supervised on the trip.” (Exhibit 2 at page 3).

C. **parent** Concerns Regarding **student 1** Participation in the Field Trip

parent admitted that she had reservations about allowing **student 1** to go on the GHS field trip. She said that **student 1** improper behavior on the **identifier** field trip was due to the fact that **student 1** had not brought his ^{ROW 42.56.360(2)} medication on the trip. **parent** claimed that she went to some lengths to ensure that **student 1** had all his medications with him on the GHS field trip. Although she attended various planning meetings, **parent** never shared her concerns with Ms. Burton, the chaperones, or any other GHS official. She did claim, however, that she intended to let **student 1** chaperone know that the chaperone needed to ensure that **student 1** take his medication on the trip. **parent** said that she was told that **student 1** chaperone would contact her prior to the trip. However, when no chaperone contacted her, **parent** made no attempt to contact the chaperone or Ms. Burton, because according to her, the **identifier** experience was “very much about shame.”

D. **Inappropriate Behavior by student 1 Before the Field Trip**

student 1 began attending GHS in September 2014. He joined the choir shortly thereafter. Over time he became acquainted and developed friendships with several of the female members of the choir. He took a particular interest in choir members **student 9** and **student 8**. **student 1** said that he would frequently touch **student 9** and **student 8**'s breasts and butts at various locations at GHS, including the choir practice room. He claimed that neither girl complained about his behavior and that he equated his conduct to an “informal handshake between friends.” He said that **student 9** had told him to “go ahead and touch my breasts.” He said that this touching continued on a fairly regular basis up to the New Orleans field trip in March, 2015. Ms. Burton stated that she was unaware of **student 1** inappropriate conduct.

student 9 and **student 8** had a different version of **student 1** conduct. Both of them stated that towards the late fall of 2014 and into 2015, **student 1** would repeatedly touch them on their arms and shoulders. Although they found his behavior annoying, they did not consider it to be inappropriate. **student 8**, however, stated that in approximately October 2014, **student 1** touched her body in inappropriate places. Although she told **student 1** to stop, his inappropriate conduct continued on an infrequent and sporadic basis. **student 8** did not tell any teacher or staff member at GHS of **student 1** conduct, because she did not think it was a problem.

student 9 advised that **student 1** did not inappropriately touch her before the New Orleans field trip. However, one other student in the choir, **student 7**, told me that in January 2015 she saw **student 1** touch **student 9**'s breasts in the choir practice classroom. **student 9** told **student 1** to stop and he did. **student 7** did not report this incident.

A third female choir student, **student 3**, said that before the field trip, **student 1** had “tapped her butt.” She told **student 1** not to do that and he did not engage in any other physically inappropriate conduct with her. **student 3** also said that **student 1** made inappropriate sexual remarks such as “nice boobs” and he claimed to have sexually explicit photos on his phone, although **student 3** never saw the photos. **student 3** did not tell any Garfield teacher or staff about **student 1** inappropriate behavior.

IV. CONCLUSIONS AND RECOMMENDATIONS

The following findings and conclusions are supported by a preponderance of the evidence:

A. Carol Burton

Carol Burton was the only Garfield teacher on the field trip. She was in charge of the trip and ultimately responsible for the safety and well-being of all the students. Although there were eight chaperones on the trip, they all reported to her. During the field trip Ms. Burton violated SPS policies in two areas:

1. Consumption of Alcohol

First, Policy No. 5006 provides that “Unprofessional Conduct” includes “possession, use, consumption, or being under the influence of alcohol . . . at a school-sponsored activity.” Ms. Burton candidly admitted that she consumed alcohol during two chaperone meetings at the Embassy Suites hotel. She also admitted that she had a couple of sips of wine aboard the Steamboat Natchez. Although Ms. Burton denies consuming more alcohol on the boat trip, there is some evidence to the contrary. However, because of her admission, it is not necessary to decide the credibility of Ms. Burton’s denial.

Additionally, Ms. Burton admitted that she was aware that the chaperones were drinking and did nothing to stop them from doing so. Even assuming that this failure to intervene is explainable due to the awkwardness of the situation, Ms. Burton’s decision to join the drinking compounded the problem. Ms. Burton was the one ultimately responsible for enforcing the rules. She failed to do so. As a consequence, one chaperone became intoxicated in front of the students and was clearly incapable of carrying out her duties as a chaperone.

2. Violation of a Generally Recognized Professional Standard

Ms. Burton also engaged in Unprofessional Conduct during the field trip in violation of SPS Policy No. 5006 by disregarding or abandoning “generally recognized professional standards . . . in the course of . . . supervising students.” Ms. Burton understood that it was impermissible for students of the opposite sex to be in each other’s rooms at any time during the field trip. Nonetheless, Ms. Burton disregarded this rule and permitted male and female students to be in each other’s rooms before curfew.

Ms. Burton’s seemingly sincere belief that the rule was discriminatory does not justify her conduct. She never expressed her concerns to GHS or SPS officials before or after going to New Orleans. Nor did she tell the students’ parents that she had concerns about the no-visitation rule. Instead, she made a unilateral decision to disregard the rule. She did not have the power or the authority to make such a decision, and the consequences of that decision clearly enabled student 1 to have a much greater opportunity to subject female students to improper sexual contact.

Based on these violations, Ms. Burton should be subject to disciplinary action.²⁴

B. Garfield High School Administrators

GHS principal Ted Howard and his three assistant principals acted appropriately throughout this entire incident. In recent years, Mr. Howard and his staff have stressed to GHS teachers the importance of strictly complying with all rules governing field trips. They have conducted trainings and created documents, such as the Garfield Field Trip Behavior Contract, which clearly identify inappropriate field trip behavior.

In connection with the New Orleans field trip Mr. Howard and his staff ensured that all of the chaperones signed the “Chaperone Guidelines” which specifically prohibited chaperones from drinking alcohol during the field trip. They also ensured that each student and his parent signed the Seattle Public Schools Field Trip Behavior and Expectations Agreement and the Garfield Field Trip Behavior Contract. He and his staff reviewed and approved the field trip request forms.

Mr. Howard and his staff bear no responsibility for the problems arising during the field trip. Beryl Miller’s decision to not notify GHS about **student 1** expulsion deprived GHS of critical information about **student 1**. Had Mr. Howard and his staff known of this information, it is certain that they would have denied **student 1** permission to go on the field trip.²⁵

Additionally, Mr. Howard and his staff had every reason to believe that Carol Burton and the chaperones would follow the rules on the field trip. Instead, Ms. Burton made a decision to consume alcohol, condone the chaperones’ consumption of alcohol, and disregard the rule prohibiting male and female students from being in each other’s rooms. Neither Mr. Howard nor his staff can be held responsible because of Ms. Burton’s decision not to follow the strict policies to which she had agreed and which GHS had impressed upon her and the other trip attendees.

C. student 1

student 1 admitted that before the field trip he frequently touched **student 9**’s and **student 8**’s breasts. **student 8** confirmed the touching but said that it was sporadic and infrequent. **student 9** claimed there was no inappropriate touching. **student 3** also reported one incident of inappropriate touching by **student 1**. Based on **student 1** admission, coupled with the other evidence, it is appropriate to conclude that he engaged in inappropriate touching prior to the field trip. It will

²⁴ In her defense, Ms. Burton’s lawyers have expressed concerns that SPS failed to properly investigate and document **student 1** expulsion from **identifier** thereby depriving Ms. Burton of critical information that likely would have resulted in precluding **student 1** from going on the field trip. It is important to note, however, that any deficiencies in SPS’s investigation of **student 1** have no bearing on, and certainly do not excuse or justify, Ms. Burton’s alcohol consumption or her failure to enforce the no-visitation rule.

²⁵ GHS cannot be faulted for failing to catch the word “expelled” which was obscurely embedded in **student 1 identifier** transcript. The district was responsible for handling **student 1** enrollment and at least two district employees were well aware of **student 1** expulsion from **identifier**. As such, the district bore the burden of ensuring that this information was placed in PowerSchools and conveyed to GHS.

be up to GHS to decide whether **student 1** should be subjected to additional discipline or expelled from GHS.

D. Students on Field Trip

Eight of the nine students I interviewed²⁶ admitted that they were in hotel rooms with members of the opposite sex. Their actions violated the Garfield Field Trip Behavior Contract, which prohibited “members of the opposite sex [from being] in each other’s rooms at ANY time.” (Exhibit 6). Each student signed this contract, thereby acknowledging that he or she was “aware of and accept[ed]” the behavior expectations in the contract. This prohibition constitutes a “published school rule” and as a result, each student is subject to discipline for violating the rule. Student Rights and Responsibilities, Code of Prohibited Conduct, Section D-120.²⁷

The decision as to whether these students should be subjected to discipline is up to Garfield High School. However, it is my recommendation that no disciplinary action be taken against any of the eight students. It is clear that Ms. Burton and several of the adult chaperones either explicitly or implicitly led the students to believe that it was permissible for male and female students to be in each other’s rooms prior to curfew. The students justifiably believed that the no-visitation rule had been modified to allow male and female students to be in each other’s rooms prior to curfew.

E. student 9

student 9 admitted to flashing her breasts during the field trip. Her conduct constituted “indecent exposure” in violation of Section E-920 of the Student Rights and Responsibilities Code of Prohibited Conduct. Garfield High School is aware of **student 9**’s conduct and apparently concluded that discipline was not warranted. I agree with this decision. **student 9**’s behavior appears to be an aberrational act of youthful indiscretion. She admitted her behavior to Garfield officials, (Exhibit 13 at page 2), and during this investigation. She accepted responsibility for what she did and expressed remorse for her improper behavior. Although formal disciplinary action may not be appropriate, the Garfield principal or one of his assistant principals should sternly warn **student 9** that any future acts of misconduct will result in disciplinary action.

F. The Chaperones

1. Consumption of Alcohol

Chaperones Jackie Bryan, John Funderburk, Robin McCain, Jackie Morgan, Aaron Wheatman, and Melicent Whinston admitted that they each had consumed alcohol during the field trip. Although Carla Lawrence refused to answer questions as to whether she was drinking

²⁶ The eight students were **student 2**, **student 3**, **student 4**, **student 5**, **student 1**, **student 7**, **student 8**, and **student 9**.

²⁷ I am confident that if all of the students on the field trip were interviewed, a number of them would admit to similar behavior.

during the field trip, there is sufficient evidence to conclude that she also consumed alcohol during the field trip. As a result, each of these chaperones violated SPS Policy No. 5201 and the Chaperone Guidelines, (Exhibit 3), which prohibited chaperones from consuming alcohol during field trips.

With the exception of Melicent Whinston, all of the chaperones drank in moderation and for the most part were discrete and concealed their drinking from most of the students. Also, again with the exception of Melicent Whinston, none of the chaperones were intoxicated or impaired to the point where they could not carry out their duties as chaperones.

2. Violation of the No-Visitation Rule

The evidence also establishes that several of the chaperones failed to carry out their duty to prevent students of the opposite sex from being in each other's rooms during the field trip. All of the chaperones knew that students of the opposite sex were not supposed to be in each other's rooms. Nonetheless, chaperones Jackie Bryan, Robin McCain, Aaron Wheetman, and Melicent Whinston admitted that they saw members of the opposite sex in each other's rooms and they did nothing to stop it.

Chaperone, Carla Lawrence, denied that she saw students of the opposite sex in each other's rooms. Her denial is not credible in light of the fact that three students said that she saw students of the opposite sex in their rooms, and allowed them to stay together.

Chaperones John Funderburk, Mary Meullion, and Jackie Morgan also denied that they had seen members of the opposite sex in each other's room. Although their denial is somewhat surprising in light of what appears to have been a fairly pervasive mixing of the sexes, there is insufficient evidence to conclude that these three chaperones were not credible.

3. Improper Contact by Ms. Whinston

There is insufficient evidence to conclude that Ms. Whinston grabbed **student 1** "butt" on Saturday night. There were no other witnesses to this incident. Also, **student 1** was unable to explain why he venture out into the hallway to encounter Ms. Whinston. Unfortunately, because Ms. Whinston was intoxicated she has no recollection of what happened that evening. However, it is clear that Ms. Whinston was under the watchful eye of other chaperones from the time she left the boat until she got back to her hotel room. Although it is possible she could have later left her room, but there is no evidence of this and Ms. Whinston was too impaired to remember what she had done after she was escorted to her room.

It is troubling, however, that Ms. Whinston apologized to **student 1** the next morning. This apology was construed by several of the students who heard it as an admission by Ms. Whinston. However, she claims that because she had no memory of what had occurred she prefaced her apology to **student 1** with the remark "if she had done or said anything that made him feel uncomfortable." Her statement is consistent with the fact that she was too impaired to remember what she had done the night before.

Given the lack of witnesses, coupled with Ms. Whinston's intoxication and **student 1** inability to explain why he was in the hallway, there is insufficient evidence to conclude whether Ms. Whinston touched **student 1** inappropriately.

4. District Response to Chaperone Violations

Although SPS cannot bring any disciplinary action against the chaperones, I recommend that SPS send a letter notifying Jackie Bryan, John Funderburk, Carla Lawrence, Robin McCain, Jackie Morgan, Aaron Wheatman, and Melicent Whinston that they will not be allowed to chaperone future field trips.

G. Beryl Miller

Beryl Miller's conduct is problematic at best.²⁸ In June 2014, Ms. Miller learned that **student 1** was seeking admission to SPS after being expelled from **identifier**. She was apparently tasked with assessing the risk he posed to SPS. She contacted **identifier** and learned the circumstances surrounding his expulsion. **identifier** also provided her with a safety plan for **student 1** which he had violated, and a letter explaining the basis for his expulsion. Ms. Miller also talked with **student 1** mother and learned additional information about **student 1** expulsion. As a result of these inquiries, Ms. Miller was aware of the following facts:

1. During an April 21-26, 2014 **identifier** field trip to New Orleans, **student 1** had inappropriately touched another male student. **identifier** found that his actions violated the school's harassment policy. (Exhibit 22).
2. Although **identifier** could have expelled **student 1**, **identifier** instead decided to place various conditions on **student 1** continued enrollment. The conditions were imposed on May 8, 2014, and included a condition that **student 1** not be allowed to participate in any overnight school trips. (Exhibit 23). Ms. Miller obtained a copy of these conditions from **identifier**.
3. On June 5, 2014, approximately one month after the conditions were imposed, several **identifier** students complained that **student 1** had engaged in similar harassing acts. **student 1** was questioned and initially admitted the complaints but refused to provide any details or context to them. It was also alleged that **student 1** had inappropriate photos on his cell phone. **student 1** refused to allow **identifier** officials to search his cell phone. **identifier** officials did examine **student 1** Ipad and found a number of sexually inappropriate text entries. (Exhibit 22).
4. On June 5, 2014, **identifier** expelled **student 1**. On the same day, **identifier** principal wrote a letter to **parent** advising her that **student 1** had been

²⁸ Given the time constraints associated with this investigation, I recommend that SPS conduct further investigation to determine whether Helen Lozan and, possibly other district employees, acted appropriately in addressing **student 1** expulsion from **identifier**. I have attempted to interview Ms. Lozan but I have learned that she will be out of the office until May 22, 2015.

expelled because of student safety, his refusal to cooperate in the investigation, and willful violation of the terms of his continued enrollment. (Exhibit 22). [redacted] provided Ms. Miller with a copy of this letter.

5. [redacted] did not appeal his expulsion but instead applied for admission to SPS.

After talking to [redacted] doctor and psychologist, Ms. Miller concluded that [redacted] could attend GHS without any restrictions on his enrollment. (Exhibit 25).

Ms. Miller's assessment of [redacted] appears to be deficient in two regards. First, after completing her investigation, Ms. Miller failed to notify GHS officials about [redacted] expulsion from [redacted]. She also failed to provide copies of the documents she received from [redacted] to SPS and GHS officials. She failed to make any record either in [redacted] file or in PowerSchools documenting that [redacted] had been expelled from [redacted] and the reason for his expulsion. Her failure to document the information she received and her failure to notify GHS of the information deprived GHS officials of critical information about [redacted]. It is likely that had GHS officials been aware of [redacted] disciplinary history at [redacted] they would have either opposed [redacted] transfer to GHS or, at the very least, attached conditions to his enrollment in order to protect other students. It is also likely that had GHS officials and Ms. Burton been aware of [redacted] expulsion from [redacted] GHS would have denied him permission to go on the New Orleans field trip.

Ms. Miller's failure to disclose this information cannot be justified by her claim that she relied on [redacted] doctor's assurance that [redacted] misconduct at [redacted] was an isolated incident, which was unlikely to be repeated, due to new medication. Even if Ms. Miller sincerely believed the doctor, which is hard to fathom, she still had an obligation to ensure that SPS and GHS officials were aware of [redacted] disciplinary record.

Second, Ms. Miller's decision to allow [redacted] to enroll at GHS without conditions, (Exhibit 25), was unreasonable. Contrary to what Ms. Miller may have believed, [redacted] disciplinary history at [redacted] did not consist of a single incident of misconduct. Rather, the information and documents in Ms. Miller's possession reflect five incidents of misconduct, all occurring over a relatively short time period. First, [redacted] inappropriately touched another [redacted] student during an April 2014 field trip. Second, in June 2014, he subjected several other [redacted] students to acts of harassment. Third, he refused to allow [redacted] officials to search his cell phone for inappropriate photos. Fourth, he had inappropriate sexual text messages on his Ipad, and fifth, he violated the conditions of his continued enrollment at [redacted] less than one month after the conditions were imposed.

Given [redacted] history of repeated acts of harassment and misconduct, his refusal to cooperate with [redacted] and his non-compliance with [redacted] safety plan, Ms. Miller's decision to impose no restrictions on [redacted] attendance at GHS defies common sense. All indications were that [redacted] inappropriate conduct was escalating and, as such, he should have been placed on very tight restrictions at GHS. Even if Ms. Miller had a good faith basis for concluding that no restrictions were needed, she should have, at a bare minimum, provided all of

the information to GHS so that GHS could have made an informed decision as to whether GHS would accept student 1 and if so, under what conditions.

Based on this conduct, Ms. Miller appears to have violated SPS policy 5281 by failing to fulfill her job responsibilities. It seems axiomatic that ensuring student safety and security is an implicit part of every SPS employee's job responsibilities. Ms. Miller failed to fulfill this basic responsibility by failing to notify GHS of student 1 expulsion and by allowing student 1 to attend GHS without restrictions. Additionally, Ms. Miller's job description includes "coordination of the mental health and social support services for at-risk students identified as chronically truant, potentially dropping out, or returning to school after a lengthy separation from school [and] providing prevention and intervention services." Her job description further requires her to "consult with school administrators, staff and community agencies regarding identified students," and she is also tasked with coordinating "the district Harassment, Intimidation, and Bullying (HIB) program; and the School Threat Assessment and Registered Sex Offender programs." (Job Description attached hereto as Exhibit 28). It certainly appears that her job description would have required Ms. Miller to notify GHS of student 1 expulsion and place restrictions on his enrollment at GHS. Nonetheless, because SPS is in a much better position to assess Ms. Miller's job responsibilities, it is best left to SPS to determine whether Ms. Miller failed to fulfill her job responsibilities.

It also appears that Ms. Miller engaged in "unprofessional conduct" by "disregarding generally recognized professional standards in assessing students," in violation of SPS Policies Nos. 5281 and 5006. Again, common sense would dictate that Ms. Miller's conduct was contrary to professional standards. However, SPS is in a much better position to determine whether Ms. Miller disregarded "generally recognized professional standards."

Accordingly, if SPS determines that Ms. Miller either failed to fulfill her job responsibilities or disregarded generally recognized professional standards, or any other SPS policies or rules, then I would recommend appropriate disciplinary action against Ms. Miller.

H. Recommendations to Ensure Future Compliance

In the past few years, GHS field trips have been plagued by problems. As explained above, students were arrested on three prior GHS Choir Field Trips. In 2012 a GHS student alleged that she had been raped on field trip to the Olympic National Park, which exposed SPS to significant legal liability. SPS is currently investigating allegations relating to a December 2014 Garfield field trip, including an allegation that male and female students shared sleeping areas while camping on a Garfield field trip.

GHS officials are to be commended for greatly improving field trip policies and training, but it does not appear that all members of the Garfield community are getting the message: that GHS and SPS have a zero tolerance for misconduct on field trips. The recent problems on the choir field trip to New Orleans reinforce this conclusion. But more stringent policies do not seem to be what is needed; the current policies are strict. What is needed is a change in culture—among teachers, parents, chaperones, and students—to one that views the policies, not as recommendations, but as a key basis of the bargain struck when rewarded the privilege of attending a field trip.

The most effective way to change this culture is to ensure that swift sanctions will result when the rules are violated. As such, it may well be appropriate for GHS to ban all GHS Choir field trips for a significant period. In imposing this ban, GHS could also announce that any other groups which violate field trip rules would be subject to a similar ban. GHS and SPS are in the best position to determine what sanction or sanctions would best convey to all teachers, chaperones, parents, and students that misconduct on future field trips will result in severe consequences.