100817-1

No. 82391-4

SUPREME COURT

OF THE STATE OF WASHINGTON

PETER BAWDEN, Appellant,

v.

SEATTLE PUBLIC SCHOOLS, Respondent.

PETITION FOR REVIEW

Pete Bawden

16016 NE 26th Street

Bellevue, WA 98008

425-861-9280

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A IDENTITY OF PETITIONER

Pete Bawden asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B COURT OF APPEALS DECISION

The decisions the Petitioner requests be reviewed are the Opinion filed 1-31-22 and the Order Denying Motion for Reconsideration entered 3-9-22. A copy of the decision is in the Appendix at pages A-2 through A-7. A copy of the order denying Petitioner's motion for reconsideration is in the Appendix at pages A-8.

C ISSUES PRESENTED FOR REVIEW

The Judge's role in the United States Court System is that of a problem solver. The first step in the problem-solving process is acknowledgement of the complaint made by the Appellant. The Appellate Court Judge incorrectly stated the complaint of the Appellant in the Judge's Opinion. Incorrectly stating the complaint of the Appellant in the Judges Opinion is a large and significant error on the Judge's part and serves to undermine the purpose of the judicial process. It appears to the petitioner that the Appellate court Judge read and used the complaint written in the Respondent's brief while not using the complaint written in the Appellant's brief. Only the Appellant has the authority to write and file the complaint. The Appellate Court Judge, in using the complaint written in the Respondent's brief was obeying the wrong authority.

D STATEMENT OF THE CASE

The Petitioner accuses Principal Andrew O'Connell of inappropriately changing the learning goal of a school lesson that the Petitioner taught and Mr. O'Connell observed and evaluated. The Learning goal was inappropriately changed because it was changed after the lesson was taught and the change made by O'Connell was not consistent with the Washington State provided curriculum that the Petitioner was employed to teach. Changing a learning goal is a procedural error. It would only be acceptable if it was done before the lesson was taught and it really should be consistent with the curriculum that the teacher is hired under contract to teach. Mr. O'Connell purposefully and inappropriately changed the learning goal for the purpose of discrediting the teaching of the Petitioner and for the purpose of putting the petitioner at risk of losing his job. Mr. O'Connell both made a procedural error and he harassed the Petitioner by making it impossible for the Petitioner to be successful at his profession because the learning

goal was inappropriately changed, similar to moving the goal posts in a football game, after the ball is kicked. In the administrative record we have the Chief Officer of Human Resources at Seattle Public Schools writing O'Connell in an email that changing a learning goal is procedural and should be avoided. We also have in the administrative record, the succeeding Chief Officer of Human Resources contradicting her predecessor by ruling that no procedural error occurred. There is evidence in the administrative record of O'Connell changing the learning goal after the lesson was taught. Lets review the evidence in the administrative record.

Trial Brief, CP 53-56.

The facts of the case are listed in the Trial Brief under the section 'Present Facts' on CP 55.

Present Facts

- On 10-29-19 Pete Bawden taught the OSPI provided Bridge to College Math Unit 2 Lesson 3, dated 2012 to his 2nd period Bridge to College Math Class and was formally observed by Andrew O'Connell.
- The learning objective Pete Bawden displayed to his students was "Simply equations to determine if they are true sometimes always or never".
- The learning objective Pete Bawden wrote in the pre-observation questions in EVAL is "Simply an equation and determine whether the simplified equation form is sometimes, always or never true". (000836)
- The published learning goal in the OSPI provided curriculum reads "Choose and produce an equivalent form of an expression to reveal and explain properties of the quantity represented by the expression"
- Bridge to College Math is currently being taught at Franklin High School during the 2020-2021 school year, however Seattle Public Schools did not add the Bridge to College Math Curriculum Materials to the Administrative Record for this case.
- Student completed exit tickets demonstrating learning of the OSPI learning goal were saved as an artifact in EVAL by Pete Bawden.

- Mr. O'Connell's evaluation of Pete Bawden in EVAL is in the Administrative Record for this case.
- The artifacts in EVAL, including the Student Completed Exit Tickets are not in the Administrative Record for this case, even though the overall evaluation that they are a part of is in the Administrative Record.
- During the 10-30-19 post observation meeting Mr. O'Connell is described in the Joe Kelly notes as saying "DO: I want to push on this, respectfully: your learning objective was to fully simplify—and many didn't do that." (000806)
- The learning target in the OSPI provided curriculum materials do not support Mr. O'Connell's assertion that the learning goal included the step "fully simplify".
- Sue Means, Chief Officer of Human Recourses of Seattle Public Schools in an 11-21-19 email to Mr. O'Connell wrote "Oh, OK. So his assertion would be a procedural one, apparently, that you changed his learning objective. So you need to make it clear that you did not change the objective." (000827)
- In an Email from O'Connell to Means, December 4, 2019, O'Connell wrote: "Thank you Sue. I really appreciate your assistance with this kind of stuff ;)". (000837)

- O'Connell Step 1 Grievance Response, December 9th, 2019: "In response to your step 1 grievance, I want to reiterate that I did not change the learning objective at any time." (000841)

REPLY BRIEF, CP 67-71.

Two more facts of the case are listed in the Reply - Brief under the section 'Present Facts – Added in addition to the opening brief' on CP 68.

Present Facts – Added in addition to the opening brief

- Clover Codd final decision letter, July 13th, 2020: "If proven true, the alleged actions of Mr. O'Connell would not violate the District's Harassment, Intimidation and Bullying Policy or procedure" (000639)
- Clover Codd final decision letter, July 13th, 2020: "You have a right to appeal my decision regarding your Harassment, Intimidation and Bullying complaint to King County Superior Court under the timelines and requirements contained in RCW 28A.645." (000640)

The Petitioner's comments about the evidence will now be provided to complete the statement of the case. Mr. O'Connell is a school administrator which means he has been educated and earned a School Administrator Certificate. Mr. O'Connell is under contract to follow all rules and procedures. Mr. O'Connell is trained in the

evaluation of the performance of teachers and is required by law to follow all rules and procedures in the completion of teacher evaluations. Even the layman knows that goals are not to be changed after an observation has been completed. Sue Means, Chief Officer of Human Resources for Seattle Public Schools communicated to Andrew O'Connell very clearly that changed learning goals are not permitted. In the Post Observation meeting with Consulting Teacher Joe Kelly, Mr. O'Connell clearly states that the Petitioner's learning goal includes completely simplifying the equations. Completely simplifying the equations was not part of the Washington State Provided curriculum or learning goal. The learning goal was to determine if an equation was true sometimes, always or never. The student completed exit tickets showed the students correctly identifying if equations were true sometimes, always or never. Seattle Public Schools did not add the curriculum materials or the completed student exit tickets to the administrative record. All of the evidence points to Mr. O'Connell inappropriately changing the learning goal. The change to the learning goal was done inappropriately because it was done after the lesson was observed and it did not agree with the state

provided curriculum that the Petitioner was employed to teach. Clover Codd was the Chief Operating Officer of Human Resources that reviewed the Harassment Complaint of the Petitioner. Clover Codd was informed in the Harassment complaint that Mr. O'Connell made a procedural error by inappropriately changing the learning goal. Clover Codd's response shows that she did not investigate the changed learning goal to determine if harassment took place. It is Clover Codd's job and legal responsibility to fully investigate claims of harassment or procedural error. Clover Codd did not practice due diligence in her review of the Petitioner's harassment complaint.

E ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Making a procedural error in performing an employee evaluation is a serious issue. Inappropriately changing a learning goal is a procedural error and using it to discredit an honest hard-working employee is an ethics and a moral issue. The Appellate Court Judge did not mention the allegation of an inappropriately changed learning goal in the five-page Judges opinion. The Petitioner's argument why review should be accepted is that reading the Judges Opinion is apparent evidence that the facts and evidence provided by the Petitioner were not considered when making the Judges ruling.

F CONCLUSION

The relief sought by the Petitioner is:

1. The Seattle Public School District ruling that workplace harassment nor a procedural error occurred be overturned.
2. Andrew O'Connell's Evaluation of Pete Bawden be invalidated.
3. Pete Bawden regains his continuing contract as a teacher with Seattle Public Schools
4. Wages due to lost employment, 9-1-21 to present.

This document Contains 1,640 words, excepting the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted,

Pete Bawden
Appellant
4-8-2022

APPENDIX

A·1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PETER BAWDEN, Appellant, v. SEATTLE PUBLIC SCHOOLS, Respondent.	)	No. 82391-4-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION

MANN, C.J. — Peter Bawden appeals a trial court order affirming the Seattle School District's (District) final administrative decision concluding that its annual performance evaluation of Bawden did not violate the District's internal policy prohibiting harassment, intimidation, and bullying. Bawden argues that the trial court abused its discretion by denying his two motions to compel supplementation of the administrative record, and erred in affirming the district's administrative decision. We affirm.

FACTS

Bawden is a teacher employed by the District at Franklin

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High School. On April 24, 2020, Bawden met with the Franklin High School principal to review his annual job performance evaluation. The performance evaluation rates teachers in several categories as unsatisfactory, basic, proficient, or distinguished. The evaluation rated Bawden as basic in three categories and proficient in three others. On April 28, 2020,

Citations and pin cites are based on the Westlaw online version of the cited material.

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Bawden alleged the portions of his evaluation that ranked him as basic violated the District's policy against harassment, intimidation, and bullying.

Under the District's policy and procedure, Bawden's complaint was first reviewed administratively by the District's Human Resources Manager for Labor and Employee Relations, Patrice Debe. Debe concluded that the evaluation did not constitute harassment, intimidation, or bullying, but was a reasonable action expected of supervisors. Bawden appealed the decision to the District's Chief Human Resources Officer, Dr. Clover Codd. On January 13, 2020, Dr. Codd concurred with Debe's conclusion.

Bawden petitioned for judicial review of the District's decision under ch. 28A.645 RCW. On October 9, 2020, Bawden moved unsuccessfully to compel the District to supplement its administrative record. Bowden sought an order compelling the District to certify that "exit tickets" the District had not retained as "artifacts" to his performance evaluation are correct and were relied on by the District when making the challenged decision that he was not a victim of harassment, intimidation, and bullying. He also sought to compel the District to certify as correct "curriculum materials" he claims the Office of the Superintendent of Public Instruction created.[1] On October 23, 2020, the trial court denied Bawden's motion to compel. On November 9, 2020, the trial court denied Bawden's second motion to compel the same materials.

On January 29, 2021, the trial court affirmed the District's decision that an unfavorable performance evaluation is not a prohibited form of harassment, intimidation, and bullying.

[1] While not part of the administrative record, both the "curriculum materials" and "exit tickets" were attached to Bawden's petition for judicial review.

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Bawden appeals.

ANALYSIS

Bawden argues that the trial court abused its discretion by denying his two motions to compel supplementation of the administrative record, that the decision was arbitrary and capricious, and that the decision was contrary to law. We disagree.

A. Supplementation of Administrative Record

Bawden argues that the trial court abused its discretion by denying his motions to compel the District to supplement the administrative record. We review a court order ruling whether to compel supplementation of an administrative record for an abuse of discretion. Lund v. Dep't of Ecology, 93 Wn. App. 329, 334, 969 P.2d 1072 (1998). "A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons." Lund, 93 Wn. App. at 334.

Under RCW 28A.645.020, the district was required to file the "complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed." As the trial court noted, the record before it was the certified record before Dr. Codd during his final administrative decision. Bawden cites no evidence, and the record does not support, that Dr. Codd relied on the documents that Bowden sought to compel. The trial court did not abuse its discretion by denying Bawden's motions to supplement.

B. Arbitrary and Capricious or Contrary to Law

Bawden next argues that the trial court erred in affirming the District's decision. Our review of administrative decisions under RCW 28A.645.010 is limited to whether the challenged decision was arbitrary and capricious, or contrary to law. Haynes v.

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Seattle Sch. Dist. No. 1, 111 Wn.2d 250, 253-54, 758 P.2d 7 (1988) (discussing the predecessor statute to RCW 28A.645.010).

The District's decision was not arbitrary and capricious. Arbitrary and capricious agency action is "willful and unreasoning action . . . without consideration and in disregard of the facts and circumstances of the case." Porter v. Seattle Sch. Dist. No. 1, 160 Wn. App. 872, 880, 248 P.3d 1111 (2011). "Action is not arbitrary or capricious when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached." Porter, 160 Wn. App. at 880.

The District's decision is far from a willful and unreasoning action. A school's performance evaluation is a standard practice to inform both the institution and the employee of ongoing progress. Bawden's evaluation reflected his supervisor's assessment of his progress. The evaluation did not label Bawden's performance as unsatisfactory, but merely basic in three categories. It is not arbitrary and capricious to conclude that a routine annual performance review does not constitute prohibited harassment, intimidation, or bullying.[2]

The District's decision was also not contrary to law. When determining whether an agency action is contrary to law, we "accord substantial deference to the agency's interpretation of law in matters involving the agency's special knowledge and expertise." Overlake Hosp. Assn. v. Dep't of Health, 170 Wn.2d 43, 50, 239 P.3d 1095 (2010). This court is "ill-equipped to act as [a] super personnel agenc[y]." Washington Fed'n of State Emps. v. Personnel Bd., 29 Wn. App. 818, 820, 630 P.2d 951 (1981). "The

[2] Additionally, we cannot—as Bawden requests—change the District's evaluation. Our review is limited to Dr. Codd's administrative decision.

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[g]overnment, as an employer, must have wide discretion and control over the management of its personnel and internal affairs." Binkley v. Tacoma, 114 Wn.2d 373, 386-87, 787 P.2d 1366 (1990).

The District's Policy No. 5207 and Superintendent Procedure No. 5207SP provide that statements or acts are considered to be harassment, intimidation, or bullying if they physically harm someone, substantially interfere with the work environment, are so severe and pervasive they create a threatening work environment, or substantially disrupt the orderly operation of the workplace. Concluding that a negative job evaluation is prohibited harassment, intimidation, or bullying, would prevent the District from determining that an employee's performance is deficient in any respect. Bawden fails to demonstrate that the District's decision was contrary to law.

Affirmed.

Mann, C.J.

WE CONCUR

Bowman, J. Appelwick, J.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PETER BAWDEN, Appellant v. SEATTLE PUBLIC SCHOOLS, Respondent.	)))))))))	No. 82391-4-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Peter Bawden moved to reconsider the court's opinion filed on January 31, 2022. The panel has determined that the motion for reconsideration should be denied.

Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Mann, C.J.

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Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

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Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated. They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains. Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.

Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Employees should also report harassment to management at an early stage to prevent its escalation.

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PETE BAWDEN - FILING PRO SE

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