IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

No. 313603

MICHAEL F. CRONIN

Appellant

vs.

CENTRAL VALLEY SCHOOL DISTRICT

Respondent

BRIEF OF APPELLANT

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TABLE OF CONTENTS

APPENDICES:

TABLE OF AUTHORITIES

Caselaw

Other

I. INTRODUCTION

Plaintiff Michael F. Cronin (hereinafter "Cronin"), was a teacher at Central Valley School District (hereinafter "School District"). (CP 11). He was terminated from employment when the School District refused to accept his union representative's timely served request for a statutory hearing on the merits of his termination.[1] (CP 135-136; 50). The School District ignored the representative's request for a statutory hearing, claiming the union representative was not an employee of the School District and had no authority to request a hearing on behalf of Cronin. (CP 135-136; 50). As a consequence, the School District failed and refused to appoint a nominee for selection of a statutory hearing officer as required by RCW 28A.405.310(4). (App. 1).

The School District then claimed that the Trial Court was divested of subject matter jurisdiction when Cronin failed to timely file a lawsuit under RCW 28A.645.010 (App. 2) to force the School District to appoint its nominee for selection of a statutory hearing

[1] The request to the School District for a statutory hearing is the first step toward the selection of a statutory hearing officer to hear the merits of a teacher's termination. See RCW 28A.405.310, RCW 28A.405.210; RCW 28A.405.300 and. (App. 1, 3 & 4).

officer as mandated under the teacher hearing procedure statute, RCW 28A.405.310[2] (CP 225-226).

The Trial Court granted the School District's Motion for Summary Judgment for lack of subject matter jurisdiction on November 29, 2012, and entered an order on December 17, 2012 Denying Plaintiff's Motion for Reconsideration. (CP 276-279; 290-291). Plaintiff appeals.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred in dismissing plaintiff's claims against the School District for lack of subject matter jurisdiction, when the School District refused and failed to appoint a nominee for the selection of a statutory hearing officer to hear the merits of plaintiff's termination.

2. The Trial Court erred in holding that RCW 28A.645.010 is controlling and bars this action.

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[2] The School District also claimed that the Trial Court lacked subject matter jurisdiction because RCW 28A.645.010 required Cronin bring his action within 30 days of when the School District Superintendent decided not to give effect to his request for hearing. (CP 225-226). They abandoned that claim at oral argument. (RP p. 18, lines 16-25; p. 19; p. 20, line 1; p. 29, lines 2-9.)

III. STATEMENT OF THE CASE

In January 2012 appellant Cronin had been employed by Central Valley School District as a teacher for seven years. (CP 11). His classroom performance was never an issue. (CP 11; 30). He had good performance evaluations. (CP 11). However, Cronin had an alcohol problem outside of school. (CP 11-13). He was not alleged to have ever been under the influence at school or while teaching. (CP 12-14; 30).

On September 30, 2011 Cronin entered an alcohol treatment program at Sundown M Ranch near Yakima with knowledge and notice to the School District. (CP 13). After his discharge from treatment there on October 27, 2011 he reported to Geiger Correctional Facility to serve a 120-day sentence on a previous DUI. (CP 13). He was granted work release privileges while at Geiger. (CP 13; 30).

On January 6, 2012, 10 days before his release and while still incarcerated, Cronin received a certified letter from the District notifying him that they were terminating his employment. (CP 14; 20-21). Since he was incarcerated, on January 11, 2012, he had his union representative, Sally McNair, timely deliver a Notice of Appeal and Request for a Statutory Hearing to the

Superintendent of Central Valley School District. (CP 14-15; 31-32; 48; 201).

On February 21, 2012, Cronin's attorney faxed a letter to the School District's attorney inquiring about Cronin's paycheck and requesting reinstatement of his benefits pending the statutory hearing. (CP 22-24). On February 22, 2012, the School District's attorney sent Cronin's counsel an email indicating that he was out of the office but would try to contact the district that day and get back to Cronin's counsel as soon as possible. (CP 25). Cronin's counsel heard nothing from the School District's attorney.

Then, on February 28, 2012, Cronin's union representative, Sally McNair, received a certified letter from the School District. (CP 32; 50). That letter stated that the School District did not consider her appeal on behalf of Cronin properly presented to them since she was not an employee of the School District and it was not authored by Cronin. (CP 32; 50). As a result, the School District claimed that Cronin had waived his right to a statutory hearing. (CP 32; 50).

On March 23, 2012, Cronin filed an action for declaratory relief and summary judgment to enforce his request for statutory hearing and for payment of benefits pending a decision on the

merits by a statutory hearing officer. (CP 3-10). The District also moved for summary judgment claiming, among other things, that the trial court lacked subject matter jurisdiction because pursuant to RCW 28A.645.010: 1) plaintiff failed to file his action within 30 days of the superintendent's uncommunicated decision not to give effect to Sally McNair's letter of appeal on behalf of plaintiff; and 2) the plaintiff failed to file his action within 30 days after the 15 days had expired from when the School District failed and refused to appoint a nominee to select a hearing officer. (CP 87-134; 225-249).

Three memoranda were filed by Cronin in support of his arguments or in opposition to the School District's position. (CP 51-72; 168-185; 213-224). The School District filed two memoranda in support of its position or in opposition to Cronin's arguments. (CP87-134; 225-249). Oral argument occurred on November 15, 2012 (CP 250) and on November 29, 2012, the court entered an order granting the defense motion for summary judgment. (CP 276-279). Cronin moved for reconsideration on November 20, 2012. (CP 251-259). The School District responded (CP 87-134; 225-249) and the court denied reconsideration on

December 17, 2012. (CP 290-291). Cronin's Notice of Appeal was filed on December 21, 2012. (CP 292-299).

IV. STANDARD OF REVIEW

The appellate court applies de novo review to an appeal from summary judgment, engaging in the same inquiry as the superior court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004); *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 65, 837 P.2d 618 (1992). Summary judgment is only appropriate if the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Kirby v. City of Tacoma*, 124 Wn.App. 454, 463, 98 P.3d 827 (2004). All facts and all reasonable inferences from those facts are construed in a light most favorable to the non-moving party. *Vallandigham v. Clover Park School Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing *Atherton Condo. Apartment-Owners Ass'n Bd. Of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)).

V. ARGUMENT

The Trial Court improperly dismissed Cronin's claims against the School District based on lack of subject matter

jurisdiction. The Trial Court incorrectly held that for purposes of RCW 28A.645.010, the School District made a "decision" not to appoint a nominee to select a hearing officer, and Cronin's failure to file his action within 30 days after the School District failed to appoint a nominee, deprived the court of subject matter jurisdiction. (CP 276-279; 290-291; RP p. 30, lines 6-22).

A. This action is not barred by RCW 28A.645.010 because the District's failure to appoint a nominee is not a "decision" or "failure to act" when a request for hearing under RCW 28A.405.310 is properly presented.

RCW 28A.645.010 provides an aggrieved person with a time limitation of 30 days to appeal to Superior Court "...any decision or order of any school official or board . . . after the rendition of such decision or order, or of the failure to act upon the same when properly presented . . . ." (See App. 2).

The second proviso to RCW 28A.645.010 directly and unequivocally exempts teacher discharge and nonrenewal appeals from the 30 day limitation period. Those kinds of cases are governed by the appeal provisions of RCW 28A.400 and 28A.405:

> Appeals by teachers,..from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provision of chapters 28A.400 and 28A.405 RCW therefor *and in all*

other cases shall be governed by chapter 28A.645 RCW. (Emphasis added).[3]

This case involves Cronin's appeal to notification of his termination from the School District. It is not subject to the 30-day limitation set forth in the first proviso of RCW 28A.645.010, because it is a declaratory action "with respect to discharge or other action adversely affecting" Cronin's contract status. The statutes relating to discharge (RCW 28A.405.300) and non-renewal (RCW 28A.405.200) referenced in the second proviso of RCW 28A.645.010 expressly provide a 10-day statute of limitations for perfecting a request for a statutory hearing to a school district's notice of termination. The declaratory judgment action filed by Cronin is an effort to enforce his rights to a statutory hearing which he claims was timely requested after the School District's notice of termination.[4] Cronin has no other remedy other than a declaratory judgment action to enforce his rights. What other remedy does a teacher have when the school district intentionally fails to perform an action (appoint a nominee)

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[3] See also RCW 28A.405.370 (App. 5) which provides that the provisions of RCW 28A.645 shall not apply to RCW 28A.405.300-.360, which are the provisions governing teacher appeals.

[4] For purposes of determining jurisdiction, the School District acknowledged that the Trial Court could assume that Cronin's request for hearing was timely made within 10 days of the date its decision to terminate was communicated to him. (CP 231).

which it is statutorily mandated to perform per RCW 28A.405.310(4)?

The 30-day limitation of RCW 28A.645.010 only applies to decisions which a school board makes in the normal course of administering the school. It does not apply to something which the School District is statutorily mandated to perform. In *Mountain View School v. Issaquah School District 411*, 58 Wn.App. 630, 794 P.2d 560 (1990), the court held that the 30-day limitation period under the first proviso to RCW 28A.645.010 only applied to "decisions that the school board has authority to decide in the course of administering the school." 58 Wn. App. at 633. The District's failure to appoint a nominee is not the kind of decision made in the course of administering the school. See *Bremer v. Mount Vernon Sch. Dist.320,* 34 Wn. App. 192, 194, 660 P.2d 274 (1983)("decision" to which RCW 28A.88.010[5] refers means a final decision by the board or official charged by statute, rule, or contract with the responsibility for making that decision.); *See also Neilson v. Vashon Island Sch. Dist. 402,* 87 Wn. 2d 955,

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[5] This statute was recodified as RCW 28A.645.010.

959, 558 P.2d 167 (1976)(until the school board accepts or rejects the recommendation of an advisory committee, no "decision" regarding a teacher's request for salary increase is made that triggers an appeal under RCW 28A.645.010.)

The requirement to appoint a nominee under RCW 28A.405.310(4) is mandatory. The school board doesn't have the authority to refuse to appoint a nominee when a timely request for statutory hearing is served upon the School District. Whether to appoint a nominee has nothing to do with administrative functioning or a decision made in the course of administering the school. It is not something that Cronin was obligated to request of the school board. His only obligation was to notify the School District of his intent to request a statutory hearing. That then triggered the School District's legal obligation to appoint a nominee. There is no discretionary authority on the part of the school board or superintendent to refuse to perform a statutorily-mandated duty to appoint a nominee:

> (4) In the event that an employee requests a hearing pursuant to RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in the following manner: Within fifteen days following the receipt of any such request the board of directors of the district or its designee and the employee or employee's designee *shall* each appoint one nominee. The two nominees shall jointly appoint a hearing

> officer who shall be a member in good standing of the Washington state bar association or a person....

(Emphasis added); RCW 28A.405.310(4).

Cronin's declaratory request for relief was the only appropriate means to address the District's failure to act. The letter from the superintendent dated February 22, 2012 was the very first indication to Cronin that the School District did not intend to appoint a nominee. (CP 50). Cronin's declaratory judgment action was, in fact, filed within 30 days of receipt of the superintendent's letter. (CP1-10; 50; 32).

The first proviso to RCW 28A.645.010 requires some triggering decision or failure to act when a matter is properly presented. In this instance, there was no "failure to act upon the same when properly presented" when the School District failed to appoint a nominee. All his union representative did was to notify the District that she was appealing Cronin's termination, requested a closed hearing, and that she was his designee. (CP 48). Cronin did not request that the District act, which it then failed to do when properly presented with that request. The failure to name a statutory nominee was mandated by statute and not an administrative act or failure to act by the school board.

Cronin's failure to force the District to appoint a nominee does not deprive the court of jurisdiction.

B. This action is not governed by the 30-day appeal requirement under RCW 28A.645.010 since there is a 10 day limitation for any appeal to a teacher termination under RCW 28A.405.200 and .310 which was satisfied in this case.

The second proviso to RCW 28A.645.010 makes teacher discharge cases subject to the statutory appeal provisions of RCW 28A.400 and .405. There is a separate statute of limitations period of 10 days, not 30 days, in which a teacher has to request a hearing on his/her termination. A discharged or nonrenewed teacher is granted the opportunity for a hearing pursuant to RCW 28A.405.310 when a timely request is made to the superintendent within 10 days of receipt of such notice. RCW 28A.405.300; RCW 28A.405.210. Once a timely request for hearing is made by a teacher, the first proviso of RCW 28A.645.010 does not apply.

After a school district receives a request for hearing, the hearing procedure statute, RCW 28A.405.310, obligates the parties to name designees who are to confer and appoint nominees for the purpose of selecting a statutory hearing officer. RCW 28A.405.310(4). This statute identifies the manner and method in which a statutory hearing officer is selected. It is procedural.

There is nothing in RCW 28A.645.010 that suggests that a party's failure to appoint a nominee within 15 days somehow deprives the court of subject matter jurisdiction. Nor is there anything to suggest that the 30-day limitation for appealing a decision by the school board under RCW 28A.645.010 applies to RCW 28A.405.310(4) or that the intentional failure of the school district to identify a nominee deprives the court of subject matter jurisdiction.

The School District's argument is arbitrary. If a teacher is the party that fails to appoint a nominee within 15 days, there is no corresponding statute which allows the School District to dismiss the teacher's request for a statutory hearing when the teacher fails to appoint. The School District's remedy under the circumstances is to request the court to order the teacher to appoint a nominee and proceed through the hearing selection process. If a teacher cannot be deprived of a statutory hearing by his/her failure to appoint a nominee, then how can the school district deprive the teacher of such a hearing? The statute would violate equal protection under the 14th Amendment due process and have no rational basis.

C. This action is not barred by the *Porter* decision since that was not a termination case and involved an administrative decision by the school board.

The Trial Court felt compelled to follow the decision in *Porter v. Seattle School District No. 1*, 160 Wn. App. 872, 248 P.3d. 1111 (2011). (RP 30, lines 9 -19). *Porter*, however, is clearly distinguishable on two grounds. First, it was not a termination case. It was not subject to the procedural requirements for challenging a discharge/nonrenewal determination under either RCW 28A.405.210 or RCW 28A.405.300. Second, the decision in *Porter* involved the selection and makeup of a curriculum committee, clearly an administrative decision of the school district. It was asserted that the committee selection process was tainted because it excluded certain community members. The court *in dicta* stated:

> The record does not support this allegation, and even if it did, there was not a timely challenge to the committee selection process. See RCW 28A.645.010.

Porter, at 881.

The aforementioned quote is the sole authority relied upon by the School District and the Trial Court for the proposition that the failure to appoint a nominee deprives the court of subject matter jurisdiction. The District has identified no case where its

interpretation of RCW 28A.645.010 has been upheld in a teacher termination case. *Porter* simply states, *in dicta,* that an objection to a committee selection decision which is within the authority of the school board to administer, is subject to an appeal of that decision within 30 days under the first proviso of RCW 28A.645.010. *Porter* does not stand for the proposition that the school district's failure to appoint a nominee in a teacher termination case is subject to the 30-day limitation period in the first proviso of RCW 28A.645.010.

Unlike *Porter*, Cronin was terminated and subject to the statutorily mandated hearing process set forth in RCW 28A.405.310. Once a timely request for a hearing was made by Cronin, the procedure set forth in the teacher termination hearing statute (RCW 28A.405.310) applies. To hold otherwise would make the second proviso of RCW 28A.645.010 superfluous. The intent of the legislature was to remove teacher termination cases from the 30-day limitation period of RCW 28A.645.010 once the teacher made a timely request for hearing. That makes sense since the discharge and nonrenewal statutes have their own independent 10-day statute of limitation requiring a teacher file a

request for hearing within 10 days of being served with a termination notice.

Once a timely request for a statutory hearing is made by a teacher, the party's actions are thereupon governed by the procedures set forth in the teacher termination hearing statute (RCW 28A.405.310) and does not default to the 30-day limitation set forth in the first proviso of RCW 28A.645.010. To hold otherwise ignores the second proviso to RCW 28A.645.010 and RCW 28A.405.370.

The School District's position appears to be that it can default to the 30-day limitation under the first proviso of RCW 28A.645.010, even though the issue involves a teacher termination appeal specifically exempted from coverage under the second proviso of RCW 28A.645.010 and RCW 28A.405.370. Its position ignores the clear intent of the legislature that matters related to a teacher's termination are expressly governed by the appeal procedures of RCW 28A.400 and RCW 28A.405.

The School District's interpretation would lead to a strained result. For instance, RCW 28A.405.310 provides a mechanism if the nominees for each respective party are unable to agree on selection of a hearing officer. The statute provides that the two

nominees "shall" jointly appoint a hearing officer. RCW 28A.405.310(4). There is no time frame under the statute in which the two nominees are to appoint a hearing officer, although the requirement that they do so is mandatory. The statute is silent on when a party is to apply to the presiding court for appointment of a hearing officer. The statute simply provides that either party may apply to the presiding court and the court shall appoint a hearing officer. There is no deadline for making this application.

If the School District's argument is taken to its logical conclusion, then failure to agree on a statutory hearing officer would likewise deprive the court of subject matter jurisdiction unless a lawsuit is filed within 30 days under RCW 28A.645.010. There is nothing in the statute which supports such an argument.

Even though this is a termination case and falls under the termination hearing procedure of the second proviso to RCW 28A.645.010, the School District takes the position that any decision or failure to make a decision (e.g. not agreeing on a statutory hearing officer) deprives the court of subject matter jurisdiction unless appealed within 30 days. Such a contention is not supported by any case law and is inconsistent with the rules

of statutory construction which requires the court give effect to the plain meaning of a statute. Under RCW 28A.645.010, termination cases are to be governed by the appeal provisions of RCW 28A.400 and RCW 28A.405, and ". . . all other cases shall be governed by Chapter 28A.645 RCW." "All other cases" has to mean cases other than those involving a teacher termination.

Cronin's declaratory judgment action is derivative of his appeal with respect to his termination and an effort to enforce his rights under the termination hearing procedures set forth in RCW 28A.405.310. The 30 day time limitation of RCW 28A.645.010 does not apply because Cronin already timely requested a statutory hearing, which the School District ignored. (CP 135-136; 50). The School District has repeatedly taken the position that it is not giving effect to the request for hearing, for reasons not addressed by the Trial Court because the case was dismissed. (CP 50; 276-279). However, for purposes of the Trial Court's determination of subject matter jurisdiction, the School District had the Trial Court assume that Cronin timely requested a statutory hearing. (CP 231). Cronin's declaratory judgment action was timely filed within 30 days of the District's February 28, 2012 letter, which was the first notice to Cronin that the

School District was not giving effect to his original request for a statutory hearing authored by his union representative. (CP 1-10; 48).

D. This action is not barred as equity requires the Trial Court to retain jurisdiction.

The School District's conduct in failing to appoint a nominee was intentional and a direct violation of RCW 28A.405.310(4), requiring they appoint a nominee. The District's intentional refusal should not be rewarded. It would be inequitable for the court to allow the School District to refuse to appoint a nominee, but on the other hand force Cronin to be subject to the 30-day time limitation under RCW 28A.645.010, without any corresponding obligation on the part of the School District.

Equity and good conscience does not support the District's position. The District does not come to court with clean hands. It has intentionally violated the law and it should not benefit by its intentional acts.

The only time plaintiff would not be entitled to a statutory hearing to determine the merits of his termination is if he missed the 10-day window to request a hearing; not if one party or the other fails to appoint a nominee. All that the teacher can do, as

Cronin has done in this case, is file a declaratory judgment action to compel the District to participate in a properly-appealed termination.

Nothing was "properly presented" by Cronin to the School District to decide, which it failed to act upon. RCW 28A.645.010 presumes that the school board failed to act upon some matter presented to them. Otherwise any failure to act by the school board would have to be appealed within 30 days, even those matters not properly presented. Simple inaction of the school board is not enough. The inaction must be a matter properly presented to the school board for decision which it fails to act upon.

Cronin did not request that the School District act. The inaction of the School District was a direct result of the school board's failure to perform a mandatory act (appoint a nominee) which they were obligated to follow. The Trial Court has subject matter jurisdiction to compel the School District to move forward to a statutory hearing.

VI. CONCLUSION

Based upon the facts and arguments set forth herein, the Trial Court had subject matter jurisdiction to determine the merits of the parties' respective arguments. This Court should reverse the orders of November 29, 2012 granting summary judgment in favor of Central Valley School District, and the order of December 17, 2012 denying plaintiff's Motion for Reconsideration, and remand the case for a determination on the merits.

Dated this 17th day of April, 2013.

Respectfully submitted:

POWELL, KUZNETZ & PARKER, P.S.

By _____
Larry J. Kuznetz, WSBA #8697
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Michael F. Cronin

Appendix 1
RCW 28A.405.310

28A.405.310. Adverse change in contract status of certificated employee, including nonrenewal of contract – Hearings – Procedure

(1) Any employee receiving a notice of probable cause of discharge or adverse effect in contract status pursuant to RCW 28A.405.300, or any employee, with the exception of provisional employees as defined in RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of contract pursuant to RCW 28A.405.210, shall be granted the opportunity for a hearing pursuant to this section.

(2) In any request for a hearing pursuant to RCW 28A.405.300 or 28A.405.210, the employee may request either an open or closed hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such a request, the hearing officer may determine whether the hearing shall be open or closed.

(3) The employee may engage counsel who shall be entitled to represent the employee at the prehearing conference held pursuant to subsection (5) of this section and at all subsequent proceedings pursuant to this section. At the hearing provided for by this section, the employee may produce such witnesses as he or she may desire.

(4) In the event that an employee requests a hearing pursuant to RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in the following manner: Within fifteen days following the receipt of any such request the board of directors of the district or its designee and the employee or employee's designee shall each appoint one nominee. The two nominees shall jointly appoint a hearing officer who shall be a member in good standing of the Washington state bar association or a person adhering to the arbitration standards established by the public employment relations commission and listed on its current roster or arbitrators. Should said nominees fail to agree as to who should be appointed as the hearing officer, either the board of directors or the employee, upon appropriate notice to the other party, may apply to the presiding judge of the superior court for the county in which the district is located for the appointment of such hearing

officer, whereupon such presiding judge shall have the duty to appoint a hearing officer who shall, in the judgment of such presiding judge, be qualified to fairly and impartially discharge his or her duties. Nothing herein shall preclude the board of directors and the employee from stipulating as to the identity of the hearing officer in which event the foregoing procedures for the selection of the hearing officer shall be inapplicable. The district shall pay all fees and expenses of any hearing officer selected pursuant to this subsection.

(5) Within five days following the selection of a hearing officer pursuant to subsection (4) of this section, the hearing officer shall schedule a prehearing conference to be held within such five day period, unless the board of directors and employee agree on another date convenient with the hearing officer. The employee shall be given written notice of the date, time and place of such prehearing conference at least three days prior to the date established for such conference.

(6) The hearing officer shall preside at any prehearing conference scheduled pursuant to subsection (5) of this section and in connection therewith shall:

(a) Issue such subpoenas or subpoenas duces tecum as either party may request at that time or thereafter; and

(b) Authorize the taking of prehearing depositions at the request of either party at that time or thereafter; and

(c) Provide for such additional methods of discovery as may be authorized by the civil rules applicable in the superior courts of the state of Washington; and

(d) Establish the date for the commencement of the hearing, to be within ten days following the date of the prehearing conference, unless the employee requests a continuance, in which event the hearing officer shall give due consideration to such request.

(7) The hearing officer shall preside at any hearing and in connection therewith shall:

(a) Make rulings as to the admissibility of evidence pursuant to the rules of evidence applicable in the superior court of the state of Washington.

(b) Make other appropriate rulings of law and procedure.

(c) Within ten days following the conclusion of the hearing transmit in writing to the board and to the employee, findings of fact and conclusions of law and final decision. If the final decision is in favor of the employee, the employee shall be restored to his or her employment position and shall be awarded reasonable attorneys' fees.

(8) Any final decision by the hearing officer to nonrenew the employment contract of the employee, or to discharge the employee, or to take other action adverse to the employee's contract status, as the case may be, shall be based solely upon the cause or causes specified in the notice of probable cause to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

(9) All subpoenas and prehearing discovery orders shall be enforceable by and subject to the contempt and other equity powers of the superior court of the county in which the school district is located upon petition of any aggrieved party.

(10) A complete record shall be made of the hearing and all orders and rulings of the hearing officer and school board.

Appendix 2
RCW 28A.645.010

28A.645.010. Appeals – Notice of – Scope – Time Limitation

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapters 28A.400 and 28A.405 RCW therefor and in all other cases shall be governed by chapter 28A.645 RCW.

Appendix 3
RCW 28A.405.210

28A.405.210. Conditions and contracts of employment – Determination of probable cause for nonrenewal of contracts – Nonrenewal due to enrollment decline or revenue loss – Notice – Opportunity for hearing

No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the

employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed as a nonrenewal of contract for the purposes of this section.

Appendix 4
RCW 28A.405.300

28A.405.300. Adverse change in contract status of certificated employee – Determination of probable cause – Notice – Opportunity for hearing

In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his or her contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinated certificated position as that procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed as a discharge or other adverse action against contract status for the purposes of this section.

Appendix 5
RCW 28A.405.370

28A.405.370. Adverse change in contract status of certificated employee, including nonrenewal of contract – Appeal from – Other statues not applicable

The provisions of chapter 28A.645 RCW shall not be applicable to RCW 28A.405.300 through 28A.405.360.