No. 91840-6
COURTS OF APPEALS 45830-6-II

SUPREME COURT OF THE STATE OF WASHINGTON

WANDA RILEY-HORDYK,

Petitioner/Appellant,

v.

BETHEL SCHOOL DISTRICT,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

VANDEBERG JOHNSON & GANDARA, LLP

William A. Coats, WSBA #4608
Daniel C. Montopoli, WSBA #26217
Attorneys for Respondent
Bethel School District

1201 Pacific Avenue, Suite 1900
P. O. Box 1315
Tacoma, WA 98401-1315
Telephone: (253) 383-3791

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. IDENTITY OF RESPONDENT

Respondent Bethel School District ("District") requests that this Court decline review of the Court of Appeals' decision in *Riley–Hordyk v. Bethel School District*, ___ Wn. App. ___ (No. 45830–6–II., May 19, 2015) (attached to the Petition for Review).

II. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly hold that the hearing officer's findings of fact—that the District closed the Bethel Online Academy (BOA) and eliminated Riley-Hordyk's position after the District projected an operating loss of $330,00 for the BOA combined with declining revenue and enrollment for the District—were not clearly erroneous when these findings were supported by the record and not challenged on appeal?

2. Did the Court of Appeals correctly hold that the hearing officer properly concluded that the District had sufficient cause to issue the notice of nonrenewal of Riley-Hordyk's employment contract?

3. Did the Court of Appeals correctly hold that the hearing officer properly concluded that the District was not required to automatically transfer Riley-Hordyk to another principal position of her choosing, when such a transfer is not required by statute or the collective bargaining agreement?

III. STATEMENT OF THE CASE

A. Because of declining enrollment and decreased revenue, the District closes the Bethel Online Academy.

As an online academy conducting learning over the Internet, the District anticipated that the Bethel Online Academy (BOA) would grow in enrollment and generate revenue for the District. CP 30:7-15. In May 2011, the District hired Wanda Riley-Hordyk ("Riley-Hordyk") as principal of the BOA.

Prior to the 2011-12 school year, the District based its budget for the BOA upon an anticipated 330 full-time students attending the school. CP 31:16-18, 251. In reality, only 145 full-time students were actually claimed by the District. CP 31:18-19. In addition, the legislature changed the funding formula for online students, reducing the state allotment and decreasing the revenue generated by the BOA. CP 31:22-32:11.

The decline in full-time students and the reduced funding allocated by the state resulted in the District projecting that the BOA would lose $330,000 during the 2012-13 school year. CP 36:16-18, 260. In addition, the District anticipated an overall decrease in enrollment for the 2012-13 school year and a decrease in funding from the state for that year. CP 33:18-34:9, 245.

Confronted with declining enrollment and revenue, the administration and School Board considered closing several District schools and programs. CP 34:10-36:1. One of the programs considered

was the BOA, which the District projected as losing $330,000 if it remained open for the 2012-13 school year. CP 35:17-36:10, CP 260.

Prior to closing a school, RCW 28A.335.020 requires the District to hold public hearings. The District held these hearings to address the possibility of closing various schools, including the BOA. CP 36:2-11, 257-58, 261. While the District was considering closing the BOA, but before it had taken final action to close the school, Riley-Hordyk requested a transfer to the principal position at Graham-Kapowsin High School. CP 108:18-109:2, 410.

The District responded to this request by letter dated February 22, 2012. CP 411. The District noted that the posting for this position had closed without Riley-Hordyk applying for the position, that she did not have the right to automatically transfer under the CBA, and that such a transfer would actually constitute a promotion because it would result in an increase in pay. CP 411. The letter added that no final action to close the BOA had occurred at that time and informed Riley-Hordyk that there would likely soon be three open assistant principal position for which she could apply. CP 412.

On February 28, 2012, the Board of Directors voted to close the BOA, beginning with the 2012-13 school year. CP 70:20-22, 265. The District closed the BOA because of reduced funding from the state for online programs, because the increased reporting required by the state for online schools increased the administrative burden upon the District and

because the BOA was projected to lose $330,000 in the next school year. CP 70:23-71:18, 265.

B. With the closing of the BOA, the District elected to not renew the employment contract of Riley-Hordyk.

By letter dated May 9, 2011, Riley-Hordyk was given notice that probable cause existed to terminate her employment at the end of the 2011-12 school year. CP 381. The notice set forth the reason for the non-renewal as the elimination of the BOA program and stated that Riley-Hordyk had "the right to apply for open positions in Bethel School District." Letter from T. Seigel to Riley-Hordyk, CP 381. The letter also advised Riley-Hordyk of her right to appeal.

The collective bargaining agreement with the Bethel Principal's Association provided that administrators who lost their job due to a reduction in force only had the right to be considered for an open teaching position. CP 402 (Art. 9, Sect. 8 of the Agreement Between Bethel's Principal's Association and Bethel School District) ("collective bargaining agreement" or "CBA"). The CBA did not require the District to transfer the principal to another principal position within the District.

The decision to close the BOA and eliminate the principal position constituted a reduction in force even though the District had the same number of principals in the 2012-13 school year, 27, as it had in the prior year. CP 50:5-13. The District had the same number of principals because it re-opened a school for the 2012-13 school year. *Id.* Had it not re-opened a school, the total number of principals would have been reduced.

Despite the CBA and the notice provided to her, Riley-Hordyk continued to request a transfer to various positions. CP 417-19. She was informed again that she did not have the right to transfer, but that she should apply for any open position in which she was interested. CP 420.

Riley-Hordyk did apply for one elementary school principal position, but failed to show for the interview. CP 113:20-114:6, 448. She was not selected for the position. Riley-Hordyk did not apply for any other position. CP 113:11-19. The District considered transferring Riley-Hordyk to a teaching position in the one area that she was qualified to teach, Spanish, but no positions were available. CP 107:7-108:3.

Riley-Hordyk was not the only administrator whose contract was not renewed at the end of the 2011-12 school year; six other administrators also received notices of probable cause that their contracts would not be renewed. CP 111:23-112:11. Those six administrators applied for other positions, and five were re-hired. CP 112:12-23.

Rather than pursue open positions within the District, Riley-Hordyk appealed the nonrenewal of her contract. After receiving testimony from five witnesses, reviewing 46 exhibits, and considering pre- and post-hearing briefs submitted by the parties, the hearing officer upheld the nonrenewal of Riley-Hordyk's contract. CP 14-18.

The hearing officer held that the District acted in good faith when it closed the BOA and that eliminating Riley-Hordyk's position was a reduction in force under the CBA. CP 17. The hearing officer also ruled that under the CBA and state law, the District was not required to transfer

Riley-Hordyk to an open Principal position. CP 17-18. As a result, the hearing officer concluded that the District had sufficient cause to not renew her employment contract. CP 18. Riley-Hordyk then appealed the hearing officer's ruling to Superior Court, pursuant to RCW 28A.405.320.

The Honorable Elizabeth Martin, Pierce County Superior Court, affirmed the hearing officer's decision in a detailed letter opinion. CP 599-604. The court then entered Findings of Fact, Conclusions of Law and an order affirming the hearing officer. CP 603. Riley-Hordyk then appealed the court's order.

On May 19, 2015, the Court of Appeals affirmed the superior court and the hearing officer. The Court of Appeals affirmed the hearing officer's conclusion that the District had sufficient cause to nonrenew Riley-Hordyk's contract. Opinion at 8-9. The Court of Appeals also rejected Riley-Hordyk's argument that that *Peters v. South Kitsap School District,* 8 Wn. App. 809, 509 P.2d 67 (1973) required that the District transfer her into another position, noting that the case was decided before the collective bargaining agreement statute, chapter 41.59 RCW, was enacted. Opinion at 10-13. Finding no right to transfer into an open principal position in the CBA, the Court of Appeals affirmed the hearing officer's decision that the District was not required to transfer Riley-Hordyk. Opinion at 13-14. Riley-Hordyk now petitions this Court for review.

IV. ARGUMENT FOR DENYING REVIEW

A. Standards Governing Review

Under RAP 13.4(b), a petition for discretionary review will be accepted by the Supreme Court only if the decision: (1) conflicts with a decision of the Supreme Court, (2) conflicts with a decision of another division of the Court of Appeals, (3) involves a significant constitutional question of law, or (4) involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

The standard of review of the hearing officer's decision is governed by RCW 28A.405.340. Under this standard, the factual determinations of a hearing officer will be upheld unless they are clearly erroneous. *Griffith v. Seattle Sch. Dist. No. 1*, 165 Wn. App. 663, 670-71, 266 P.3d 932 (2011), *rev. denied,* 174 Wn.2d 1004 (2012). While a factual determinations are reviewed under the clearly erroneous standard, a reviewing court makes a de novo determination of the applicable law. *Griffith* at 670-71. Whether sufficient cause exists to nonrenew a certificated employee's contract is a legal conclusion and "should not be disturbed unless it constitutes an error of law." *Griffith* at 671.

B. The hearing officer correctly held that sufficient cause existed to nonrenew Riley-Hordyk's contract.

The hearing officer found that the District acted in good faith when it decided to close the BOA, noting that the decision was made after a public hearing and School Board consideration and that the decision was based upon the recommendation of district employees and their financial

committees. CP 17 at ¶ 4.4. The hearing officer determined that the decision to close the BOA was based upon a projected operating loss of $330,000 for the BOA for the 2012-13 school year and declining revenues overall for the District. CP 15.

The hearing officer also found that the elimination of Riley-Hordyk's position was a reduction in force even though the District ended up with the same number of principals. CP 17 at ¶ 4.4. As the hearing officer stated, the District "ended up with the with the same number of Principals after the BOA closure simply because 2012-13 included a previously planned reopening of another school." CP 17 at ¶ 4.4. For these reasons, the hearing officer concluded that under the CBA and state law, the District was not required to transfer her to another principal position. CP 17-18. The Superior Court, after a thorough review of the record and the case law, concluded that the hearing officer's decision was not clearly erroneous or arbitrary and capricious, and that sufficient cause existed to nonrenew Riley-Hordyk. CP 638.

The Court of Appeals agreed: "The hearing officer's conclusion that sufficient cause existed to support the District's nonrenewal of Riley–Hordyk's contract is supported by the foregoing case law and the hearing officer's findings of facts." Opinion at 8. The court added that "the hearing officer did not err in concluding that sufficient cause existed to nonrenew Riley–Hordyk's contract." Opinion at 9.

As explained below, the hearing officer, the Superior Court, and the Court of Appeals all correctly held that the District had sufficient cause to nonrenewal Riley-Hordyk's contract.

C. Washington's "continuing contract" law and the "nonrenewal" of certificated employees.

In Washington, the employment of teachers, principals, and other certificated employees is governed by statute, Chapter 28A RCW. Under RCW 28A.405.210, known as the "continuing contract" statute, certificated employees are employed for one-year terms which are usually renewed each year. RCW 28A.405.210.

The statute, however, permits school districts to prevent the renewal of employee contracts for cause. RCW 28A.405.210. Such nonrenewal of a contract typically occurs when performance deficiencies, declining enrollment or economic difficulties lead a school district to conclude that the retention of the employee's services would be inappropriate. *See, e.g., Barnes v. Seattle School District*, 88 Wn.2d 483, 487, 563 P.2d 199 (1977); *Robel v. Highline School District*, 65 Wn.2d 477, 485, 398 P.2d 1 (1965); RCW 28A.405.210.

D. The decision to not renew an employee's contract may only be reversed if the district acted illegally, with bad faith, or in an arbitrary and capricious manner.

A school district's right to nonrenew a certificated employee may be set aside only if the district acted illegally, with bad faith, or in an arbitrary and capricious manner. *See Diedrick v. School Dist. 81*, 87 Wn.2d 598, 607, 555 P.2d 825 (1976); *Refai v. Central Washington*

University, 49 Wn. App. 1, 8, 742 P.2d 137 (1987). As the Washington Supreme Court has held:

> [A] district properly may reduce salaries and require the same job to be performed, or it may abolish and consolidate employment positions and impose the duties on other employees where done in good faith and in a manner consistent with the district's economic exigencies or other requirements.

Diedrick, 87 Wn. 2d at 605. Because the school district did not act arbitrarily or capriciously, the *Diedrick* court upheld the district's personnel decisions, which included the nonrenewal of teachers and administrators. *Id.* at 609.

In addition, an employee disagreeing with the judgment exercised by an employer does not mean that the employer acted arbitrarily and capriciously. *See, e.g., City of Federal Way v. Pub. Employment Relations Comm'n*, 93 Wn. App. 509, 514, 970 P.2d 752 (1998) ("When room for two opinions exists, an action is not arbitrary and capricious even though one believes the conclusion is erroneous.")

Rather, an employer's action is "arbitrary and capricious" if it is willful and unreasoning and taken without regard to the surrounding facts and circumstances. *Cox v. Lynnwood*, 72 Wn. App. 1, 6, 863 P.2d 578 (1993) (citing *Washington Waste Sys, Inc. v. Clark Cy.*, 115 Wn.2d 74, 81, 794 P.2d 508 (1990)). Evaluating whether an agency's decision was arbitrary and capricious involves evaluating the evidence considered by the agency in making its decision. *Pierce County Sheriff v. Civil Serv. Comm'n*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). In addition, "'[w]here

there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration.'" *Landmark Development, Incorporated v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999) (quoting *DuPont-Fort Lewis Sch. Dist. No. 7 v. Bruno*, 79 Wn.2d 736, 739, 489 P.2d 171 (1971)). Furthermore, the burden of demonstrating the invalidity of agency action is on the party asserting invalidity. *Apostolis v. Seattle*, 101 Wn. App. 300, 304, 3 P.3d 198 (2000).

Here, the financial need to reduce expenditures for the 2012-13 school year was well established. As the hearing officer found, the decision to close the BOA was based upon a projected operating loss of $330,000 for the BOA for the 2012-13 school year and declining revenues overall for the District. CP 15.

Moreover, as the Court of Appeals noted, Riley-Hordyk did not assign error to the hearing officer's findings of financial distress for the District. For this reason, these findings of economic distress are verities on appeal. Opinion at 8. In addition, the Court of Appeals noted that the findings were also supported by substantial evidence. Opinion at 8, n.10.

E. In the absence of a statute or a contract granting the right to transfer, an employee has no right to transfer to another position.

Except as otherwise may be provided by statute or in a collective bargaining agreement, the employment relationship with a school district is governed by principles of general contract law. *See Corcoran v. Lyle Sch. Dist. No. 406*, 20 Wn. App. 621, 623, 581 P.2d 185, 187 (1978)

("Beyond the statutory rights contained in the continuing contract law, the relationship between the school district and its employees is a contractual one governed by general principles of law.") Because the teacher in *Corcoran* failed to comply with the statutory requirements for signing his employment contract, the court held that the teacher had no due process rights to continued employment. *Id.* at 623-25.

Indeed, any due process right that a certificated employee has to continuing employment must derive from a property interest created by state law. As the Ninth Circuit has held: "To state a claim under the Due Process Clause, a plaintiff must first establish that he possessed a "property interest" that is deserving of constitutional protection." *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998) (citing *Gilbert v. Homar,* 520 U.S. 924, 117 S. Ct. 1807, 1811, 138 L.Ed.2d 120 (1997)). To possess a property interest in a benefit such as the automatic right to transfer, "an individual must have more than 'an abstract need or desire for it' or 'a unilateral expectation of it.'" *Brewster*, 149 F.3d at 982 (quoting *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972)).

Rather, as the Supreme Court has explained, these due process property interests must derive from state law:

> Property interests ... are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Roth, 408 U.S. at 577. Thus, it is Washington law that governs a public employee's due process claim and determines whether that employee has a due process right to transfer.

Here, there is no statute, collective bargaining agreement, or contract entitling Riley-Hordyk to transfer to another principal position. The District's notice to Riley-Hordyk stated specifically that she had no right to transfer to another position.

In the absence of any statutory or contractual right to transfer, Riley-Hordyk has no right to transfer.

Riley-Hordyk, however, primarily relies upon a 1973 case, *Peters v. South Kitsap School District,* to argue that the District was required to transfer her. Petition at 1, 9-13. According to Petioner, *Peters* imposes "an affirmative duty on the District to 'offer' open positions to Riley-Hordyk, and then transfer her to one of the open positions." Pet. at 10.

As the hearing officer, the superior court, and the Court of Appeals have held, however, *Peters* has no bearing on this case. There are three reasons why *Peters* is not relevant.

First, the actual holding of *Peters* is quite narrow. In *Peters*, the court held that a school district was not required to offer a nonrenewed teacher a different teaching position at the expense of another teacher solely because the nonrenewed teacher had greater seniority. 8 Wn. App. at 815. Because seniority is not an issue here, *Peters* is inapplicable.

Second, to the extent that *Peters* may be read more broadly, the case states only that a nonrenewed teacher has the right to apply for vacant

positions and that a school district should use objective criteria when reviewing candidates, but that the school district is under no obligation to create a position for the nonrenewed employee. *Id.* at 816-17. Here, Riley-Hordyk applied for only one vacant position, but then never went to the interview. Because she never really applied for a position, *Peters*, even when read broadly, is not applicable.

Finally, *Peters* was decided in 1973, *before* the Legislature enacted statutes governing collective bargaining by principals and allowing school districts to transfer principals to subordinate positions. The *Peters* case itself notes that Washington is not a "true tenure" state and that any expectation of continued employment or reemployment rights derives from statute. *Peters* at 813. The subsequent enactment of statutes allowing for collective bargaining (RCW 41.59) and for the transfer of principals (RCW 28A.405.230) abrogates the holding of *Peters* advocated by Riley-Hordyk. Moreover, the collective bargaining agreement between the District and the Bethel Principal's Association only provides for the transfer to a teaching position. Given the terms of the CBA and the enactments of RCW 41.59 and 28A.405.230, the hearing officer, Superior Court and Court of Appeals correctly determined that *Peters* has no relevance to the case at hand.

F. Riley-Hordyk's continued reliance upon *Peters* is misplaced and not supported by current law.

Riley-Hordyk's statement that "continuing contract law" and *Peters* requires districts to offer a position to "internal candidates before

opening the positions" to others, Pet. at 9, is not an accurate state of the law nor an accurate reading of *Peters*. Furthermore, *Peters*, a case decided over 40 years ago, predates more recent statutes that affect the reemployment rights of nonrenewed principals. As discussed in the following section, these statutory developments undercut Riley-Hordyk's attempts to make *Peters* relevant to the case at hand. [1]

Any due process right that a teacher has to continuing employment or to transfer must derive from a property interest created by state law. *See Roth, supra.* Thus, it is Washington law that governs whether a public employee's due process claim. The *Peters* court recognized this requirement when it noted that the reemployment rights of nonrenewed teachers are controlled by RCW 28A.67.070, the continuing contract law in effect in 1973. *Peters* at 810 n.1, 813-14. Since *Peters,* however, the legislature has enacted two statutes that affect the property interests and reemployment rights of principals.

In 1975, the collective bargaining statute for certificated employees, RCW 41.59, was passed. The purpose of the statute is:

> to prescribe certain rights and obligations of the educational employees of the school districts of the state of Washington, and to establish procedures governing the

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[1] In an attempt to bolster *Peters* and make the case relevant, the Petitioner misquotes *Arnim v. Shoreline Sch. Dist. No. 412*, 23 Wn. App. 150, 594 P.2d 1380 (1979). According to the Petitioner, the *Armin* court stated: "[*Peters*] affords reemployment rights to all covered employees." Pet. at 12-13 (citing *Armin* at 154). But that is the not what the *Armin* court stated; rather, *Armin* was referring to RCW 28A.67.070—and not *Peters*—as the source of law affording "reemployment rights to all covered employees." *Armin*, 23 Wn. App. at 23.

> relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education.

RCW 41.59.010. Under the statute, employees have the right to bargain collectively and to enter into collective bargaining agreements. *See* RCW 41.59.060. The statute allows for a bargaining unit of principals and assistant principals. RCW 41.59.080(3).

After passage of the collective bargaining statute, collective bargaining agreements may provide specifically for the transfer of certificated employees and establish the rules for effectuating these transfers. *See Lake Washington Sch. Dist. No. 414 v. Lake Washington Educ. Ass'n/Washington Educ. Ass'n*, 109 Wn.2d 427, 428-29, 745 P.2d 504 (1987), *amended sub nom. Lake Washington Sch. Dist. No. 414 v. Lake Washington Educ. Ass'n*, 757 P.2d 533 (Wash. 1988). In *Lake Washington,* the court enforced the collective bargaining agreement and allowed the teachers to transfer because the agreement provided for the transfer. *Id.* at 435.

Conversely, a collective bargaining agreement may contain reduction in force and reemployment provisions that limit or destroy any right to transfer. Here, for example, the CBA between the District and the Bethel Principal's Association only provides for the transfer to a teaching position following a reduction in force:

> In the absence of a reduction in force among Bethel Education Association staff [teachers], non-interim administrators in good standing, who lose their positions due to a reduction in force, will be considered for a contract

> for an open teaching position for which he/she is qualified.
> ...

CP 402 (Art. 9, Sect. 8). The District considered transferring Riley-Hordyk to a Spanish teaching position—the only subject she was qualified to teach—but no positions were available. CP 107:7-108:3.

And in the 1975-76 session, the Legislature enacted RCW 28A.405.230, which allows districts to transfer principals with less than three years experience, to a subordinate certificated position:

> Any certificated employee of a school district employed as . . . principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative **or nonadministrative certificated position** for which the annual compensation is less than the position currently held by the administrator.

RCW 28A.405.230 (emphasis added). A nonadminstrative certificated position is typically a teaching position. Thus the statute allows, but does not compel, a district to transfer a principal with less than three years experience to a lower-paying teaching position.

For principals with three or more years experience, RCW 28A.405.230 allows districts to unilaterally transfer them to another administrative position, provided that there is no reduction in salary. *Sneed v. Barna*, 80 Wn. App. 843, 848, 912 P.2d 1035, *rev. denied,* 129 Wn.2d 1023 (1996). As the *Sneed* court stated:

> Under [RCW 28A.405.230], the District has the right to transfer tenured principals as long as their salaries are not reduced. This allows the employer to match the skills of the individual administrator with the District's needs, either or both of which may change from year to year.

Id. Thus, the *Sneed* court affirmed the transfer, even though the employee argued that the transfer "was in reality a demotion." *Id.* at 848-49.

By granting districts the discretion to unilaterally transfer a principal, the legislature has significantly gutted any "right to transfer" perceived by Riley-Hordyk in the *Peters* case. After RCW 28A.405.230.. Thus, Riley-Hordyk's argument that she has the right to transfer to an administrative position has no merit.

Under the CBA, RCW 41.59, RCW 281.405.230, or RCW 28A.405.210 (the modern day version of RCW 28A.67.070), there is no right to transfer. Under the law and the facts of this case, Riley-Hordyk has no right to transfer. Even if one believes that *Peters* might have given Riley-Hordyk the right to transfer in 1973, there is no right in 2013.

Thus, the *Peters* decision is not relevant to the case at hand.

G. Riley-Hordyk's argument that RCW 41.59.080(7) prohibits collective bargaining agreements from restricting employee transfers—raised for the first time in her petition—should be rejected by this Court.

In her Petition, Riley-Hordyk argues for the first time that RCW 41.59.080(7) prohibits collective bargaining agreements from affecting the transfer rights of employees. Pet. at 8, 13-14. In support of this argument,

Riley-Hordyk cites *Kelso Education Association v. Kelso School District,* 48 Wn. App. 743, 749, 740 P.2d 889 (1987). In briefing and in argument to the Court of Appeals, Riley-Hordyk never cited RCW 41.59.080(7) or the *Kelso Education Association* case.

An argument raised for the first time in a petition for review should not be considered by this Court. *See, e.g. Fisher v. Allstate Ins. Co.,* 136 Wn. 2d 240, 252, 961 P.2d 350 (1998) ("This court does not generally consider issues raised for the first time in a petition for review.")

In addition, the holding of *Kelso*—that collective bargaining agreements cannot waive the continuing contract rights found in RCW 28A.67.070 (now RCW 28A.405.210)—is not relevant because there is no continuing contract right to automatically be transferred to another principal position. *See* Sections E & F *above.*

V. CONCLUSION

Because sufficient cause existed to not renew Riley-Hordyk's contract, and because the District did not act illegally, arbitrarily or capriciously, the District requests that this Court deny review of the decision by the Court of Appeals.

RESPECTFULLY SUBMITTED this 16th day of July, 2015.

VANDEBERG JOHNSON &
GANDARA, LLP

By _____
William A. Coats, WSBA #4608
Daniel C. Montopoli, WSBA #26217
Attorneys for Respondent
Bethel School District

CERTIFICATE OF SERVICE

The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandeberg Johnson & Gandara, LLP. On the 16th day of July, 2015, in the manner indicated below, I caused a copy of:

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

to be served, via Legal Messenger, on Counsel for the Appellant:

Tyler K. Firkins
Van Siclen, Stocks, & Firkins
721 45th St NE
Auburn, WA 98002-1381

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 16th day of July, 2015.

Mary D. Petrich