Court of Appeals No. 33889-4-III
Grant County Superior Court No. 14-2-00502-1

# SUPREME COURT OF THE STATE OF WASHINGTON

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**Michele Anderson, a single person, individually and as the administrator of the Estate of Sheila Rosenburg**, Petitioner

v.

**Soap Lake School District, et. al**, Respondent

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# RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

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## I. COUNTER STATEMENT OF THE CASE

Sheila Rosenberg and Pavel Turchik were both tragically killed on February 19, 2011 when the vehicle driven by Mr. Turchik hit a culvert and flipped numerous times. At the time, Mr. Turchik was intoxicated and driving 99 miles per hour. Shortly before the accident, Mr. Turchik and Ms. Rosenberg were at the house of Igor Lukashevich, who at the time was employed as a basketball coach for Soap Lake School District (hereinafter, "the District"). Mr. Lukashevich allegedly gave Mr. Turchik alcohol while Mr. Turchik was at Mr. Lukashevich's house on the evening of the accident.

The underlying lawsuit was brought by Michelle Anderson in her individual capacity and as the Administrator of the estate of her daughter, Sheila Rosenberg, against the District, the Grant County Sheriff's Department and Corporal Allan Sleeper.

On September 3, 2015, the trial court granted summary dismissal of all claims against the Grant County Sheriff's Department and Corporal Sleeper. On October 9, 2015, the trial court granted summary dismissal of Ms. Anderson's claims against the District. CP 498. The District's summary judgment motion was premised upon the argument that the District did not owe a duty to Ms. Rosenberg at the time of her death. CP 168-178.

Ms. Anderson appealed the trial court's granting of summary judgment to Division III of the Washington Court of Appeals. On

November 22, 2016, the Court of Appeals upheld the trial court's decision, finding in relevant part: "The gathering at Lukashevich's home was so distant in time and place from any normal school activity that it was outside the district's authority, precluding its liability for any harm." *Court of Appeals Opinion*, at 4 (hereafter "Opinion").

Ms. Anderson petitions this Court for review based largely upon the same reasons she appealed to Division III. She alleges: 1) the District owed a contractual duty to Ms. Rosenberg, a duty heightened by a claimed "adhesion contract;" 2) the District was negligent in the hiring, supervision, and training of Mr. Lukashevich; and 3) the District is vicariously liable for Mr. Lukashevich's act of providing alcohol to Mr. Turchik. *Petition for Review*, at 6. These arguments have been rejected by the trial court and Court of Appeals, and as set forth herein should be rejected by this Court.

Before addressing those arguments, Ms. Anderson's failure to meet the requirements of RAP 13.4(b) will be discussed. Ms. Anderson argues that the Court of Appeals' opinion raises an issue of substantial public interest. However, her argument simply asks this Court to extend a duty to a school district where one does not exist. Ms. Anderson also argues that the Court of Appeals decision conflicts with another Court of Appeals decision. Although it is not entirely clear, it seems she is referencing *Rhea v. Grandview School Dist. No. JT 116-200*, 29 Wn. App. 557, 694 P.2d 666

(1985). However, that argument misinterprets the holding of *Rhea,* which holds that a school district is not liable when a student is injured or killed at a non-sanctioned event, in which the district does not participate. *Id.* at 563.

Having failed to meet the requirements of RAP 13.4(b), Ms. Anderson's petition should be denied.

In addition, review is not warranted because the Court of Appeals' decision is correct. Ms. Anderson is asking this Court to impose a duty on school districts to supervise students at all times, regardless of the lack of connection to the school district, and based solely upon an activities code signed by a student, pursuant to which the student agrees not to participate in certain conduct. Not only has no Washington court ever before recognized such a duty, but the imposition of such a duty would create endless and unlimited liability for school districts.

Ms. Anderson's argument that the District was negligent in its hiring, supervision and retention of Mr. Lukashevich is equally unavailing, as the record is totally devoid of any evidence that the District knew or should have known of Mr. Lukashevich's alleged unfitness at the time of his hiring or at any point between his hiring and the accident in question.

Finally, Ms. Anderson's vicarious liability argument fails as a matter of law, as Mr. Lukashevich's alleged action in providing alcohol to

Mr. Turchik was intentional and/or criminal conduct outside the scope of his employment and not taken in furtherance of the District's interests.

## II. ARGUMENT

### A. Ms. Anderson Has Not Met The Criteria Of RAP 13.4 And As Such Her Petition For Review Should Be Denied

Rule of Appellate Procedure 13.4(b) states the Supreme Court will accept review if the Court of Appeals' decision conflicts with another Court of Appeals decision, or if the case involves an issue of substantial public interest. RAP 13.4(b).

Ms. Anderson alleges that the following issues are both present in this case and of substantial public interest: 1) the creation of a duty through a contract of adhesion between a school district and student; 2) holding a school district liable for the supervision, training, and hiring of a basketball coach who serves student-athletes alcohol; and 3) holding a school district liable for the sanctioned activity of an employee coach. *Petition*, at 1-2.

Ms. Anderson also alleges that the Court of Appeals' finding that Mr. Lukashevich's party was not a school-sanctioned activity that imputes liability to the District conflicts with *Rhea*, another appellate decision.

#### i. There Are No "Issues of Substantial Public Interest"

Despite arguing that multiple facets of the Court of Appeals' opinion raise issues of substantial public interest, Ms. Anderson does nothing to

detail those interests or how the opinion contravenes them. Instead, she simply mirrors the arguments she made to the trial court and Court of Appeals, and attempts to equate public interest with how she would prefer Washington law to operate.

Ms. Anderson alleges that the District and its student-athletes formed a contract of adhesion that creates a duty on the part of the school district to protect those student athletes, including Ms. Rosenberg. This is an inaccurate reading of the law and was rejected by the trial court and Court of Appeals. *See infra* Part II. B.(i)(c). Regardless, Ms. Anderson alleges that the Court of Appeals erred in finding there was no breach of duty on the part of the District, and that that finding created a substantial public interest. *Petition*, at 15. There is no discussion, however, as to *how* the court's decision created a substantial public interest.

Adhesion contracts exist when one party has superior bargaining power and submits a contract to the other party on a "take-it-or-leave-it" basis. *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 459, 45 P.3d 594, 602 (2002), *as amended* (June 6, 2002). While adhesion contracts are not *per se* unconscionable, they are interpreted against the drafter and invite scrutiny for unconscionability. *Id.*; *Adler v. Fred Lind Manor*, 153 Wn. 2d 331, 103 P.3d 773 (2004).

The public interest is protected by existing law covering adhesion contracts. Ms. Anderson asks this Court to assume that a contract existed between the District and Ms. Rosenberg where there was none, and then argues that the public interest is implicated because the District has been allowed to flout its duty as a party to an adhesion contract. "[T]he Activities Code is an *agreement* between SLSD and its student athletes, it bears none of the hallmarks of a legal *contract*." *Opinion*, at 5 (emphasis original). In reality, Ms. Anderson's "adhesion contract" argument does not address the public interest, but asks the Court to find a contract where none existed.

The same can be said for the assertion that the District negligently hired, supervised and trained Mr. Lukashevich. Currently, the public interest is served through well-settled law by holding school districts, and other employers, liable when they negligently hire an employee:

> [A]n employer may be liable to a third person for the employer's negligence in hiring or retaining a servant who is incompetent or unfit. Such negligence usually consists of hiring or retaining the employee with knowledge of his unfitness, or of failing to use reasonable care to discover it before hiring or retaining him.

*Peck v. Siau*, 65 Wn. App. 285, 288, 827 P.2d 1108, 1110 (1992) quoting *Scott v. Blanchet High School*, 50 Wn. App. 37, 43, 747 P.2d 1124 (1987).

The Court of Appeals properly found that the District was not negligent in hiring, supervising, or training Mr. Lukashevich. *Opinion*, at 6. Again, Ms. Anderson is not arguing for the Court to re-examine tort law for

the benefit of the public interest, but to find that the Court of Appeals erred in finding no evidence of negligent hiring, supervision or training.

The same applies to the Ms. Anderson's claim that a school-sanctioned activity should impute liability to the school district. The law is clear that the duty a school district owes to its students is limited to times when the students are in the "custody" of the school district and/or engaged in a school-related activity. This supervisory duty can extend to off-campus extra-curricular activities only if those activities are under the supervision of district employees such as athletic coaches, band directors, and debate coaches. *Travis v. Bohannon*, 128 Wn. App. 231, 239, 115 P.3d 342 (2005). "[W]here the event causing the injuries is so distant in time and place from any normal school activity that it would be assumed that the protective custody was in the parents," a claim is invalid. *Coates v. Tacoma Sch. Dist. No. 10*, 55 Wn. 2d 392, 399, 347 P.2d 1093, 1097 (1960). This is the case here. "SLSD had no way to anticipate the danger or exercise its supervision over Sheila Rosenberg at midnight on a Friday." *Opinion*, at 4.

This Court recently found a school district liable for harm to a student that occurred off school grounds. *See N.L. v. Bethel School District*, 186 Wn. 2d 422, 378 P.3d 162 (2016).That case is distinguishable because in that case the school district knew of the danger that resulted in the harm to the plaintiff. In that case, an 18-year-old student who was a registered sex

offender was not to be in contact with anyone more than two years his junior. *Id.* The school district knew this but did not inform faculty of the student's status, or keep the student separate from younger students. *Id.* at 428. The 18-year-old student raped a 14-year-old student off campus after meeting her at track practice. The 18-year-old tricked the girl into leaving campus with him and raped her at his house. *Id.* The school district argued that it did not owe the plaintiff a duty because the harm (the rape) occurred off campus. This Court disagreed, finding that "the mere fact that the injury occurs off campus is not by itself determinative." *Id.* at 435. Instead, the relevant inquiry is the "location of the negligence." *Id.*, citing *Stoddart v. Pocatello Sch. Dist.*, 149 Idaho 679, 684, 239 P.3d 784 (2010). In *N.L.*, the "location of the negligence" was at the school district based upon the school district's knowledge of the 18-year-old student's status as a registered sex offender and its failure to follow internal policies regarding the same. *Id.*

In this case, there was no "sanctioned" activity because Ms. Rosenberg was not in the "custody" of the District. *See infra* Part II. B.(i)(a). There also was no negligence "at the school district" which can result in liability to the district for this off-campus incident.

There is a public interest in keeping alcohol from minors, and in punishing adults who furnish it, but Washington law has this covered. *See* RCW § 66.44.270. What Ms. Anderson is really arguing is for the Court to

extend liability to school districts to situations over which they have no control. Again, Ms. Anderson asks this Court to find negligence where there is none, not because the public interest demands review by this Court.

### ii. The Underlying Court of Appeals Decision Does Not Conflict With *Rhea* or Any Other Washington Case Law

Ms. Anderson alleges that the Court of Appeals' opinion conflicts with Washington case law, but all authority she cites to is either clearly factually distinguishable, or is favorable to the District.

Notably, Ms. Anderson quotes *Rhea v. Grandview School Dist. No. JT 116-200*: "Even when students are not in 'custody' or compulsory attendance, liability may nevertheless attach when schools supervise and exercise control over extracurricular activities." *Id.* at 560 (internal citations omitted); *Petition*, at 22. In *Rhea*, a student was killed in a car accident after she consumed alcohol at a senior "release day" party and drove home. *Rhea*, at 559. A faculty advisor knew the students were seeking alcohol for the party, voiced disapproval and reported the incident to the principal. *Id.* The court found the party was not a sanctioned school activity and was outside the school district's authority. "Even when viewed in the light most favorable to the nonmoving party, it cannot be said that mere knowledge by the faculty adviser and principal brought the senior party within the scope of the District's authority." *Id.*, at 561 (internal citations omitted). Ms.

Anderson's reliance on *Rhea* is misplaced because *Rhea* states that in some circumstances, even with knowledge of a potential danger, a school district may not be liable. In this case, the school district is not liable and did not even have any knowledge of a potential danger.

Ms. Anderson also cites *Travis v. Bohannon*, 128 Wn. App. 231. In *Travis*, the granting of summary judgment was reversed and a duty was imposed on a school district because a student was injured during a school-sponsored "workday" that took place on a school day. *Travis*, 128 Wn. App. at 234-35. The duty imposed on the school district was contingent on the plaintiff partaking in a school-sanctioned activity. In other words, there was control over the student exercised by the school district at the time of injury. The Court of Appeals' decision herein does not conflict with *Travis*.

### B. Ms. Anderson's Claims Of Breach Duty, Breach of Contract, And Negligent Supervision Were Properly Dismissed

#### i. Soap Lake School District Did Not Owe Sheila Rosenberg A Duty At The Time Of Her Accident

An actionable negligence claim requires proof of the following elements: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) injury; and (4) that the claimed breach was a proximate cause of the resulting injury. *Webstad v. Stortini*, 83 Wn. App. 857, 865, 924 P.2d 940 (1996). If the defendant owed the plaintiff no duty, the negligence action fails. *Folsom v. Burger King,* 135 Wn.2d 658, 671,

958 P.2d 301 (1998). Whether a duty exists is a question of law. *Osborn v. Mason County*, 157 Wn.2d 18, 22–23, 134 P.3d 197, 200 (2006).

In Washington, a school district has the legal duty to protect students in its custody from foreseeable injury: "a school district has the power to control the conduct of its students *while they are in school or engaged in school activities*, and with that power goes the responsibility of reasonable supervision." *Peck*, 65 Wn. App. at 292 (emphasis added).

Washington law is clear that the duty a school district owes to its students is limited to times when the students are in the "custody" of the school district and/or engaged in a school-related activity. This supervisory duty can extend to off-campus extra-curricular activities only if those activities are under the supervision of district employees such as athletic coaches, band directors, and debate coaches. *Travis*, 128 Wn. App. at 239. The liability of a school is not limited to situations involving school hours, property, or curricular activities. *Sherwood v. Moxee School Dist. No. 90,* 58 Wn.2d 351, 363 P.2d 138 (1961). Extra-curricular activities under the auspices of the school also fall within a school's duty to supervise. *Carabba v. Anacortes School Dist. No. 103,* 72 Wn.2d 939, 435 P.2d 936 (1967). At some point, however, the event is so distant in time and place that the responsibility for adequate supervision is with the parents rather than the school. *Coates,* 55 Wn.2d at 399.

This Court, in *N.L. v. Bethel School District*, found a school district owed a duty to a student when that student was raped off campus by another student who was a registered sex offender. 186 Wn. 2d 422. However, the duty was imposed because the school district knew of the student's sex offender status and did nothing to protect its students. *Id.* While the harm was off campus, the "location of the injury" was at the school district. Unlike *N.L.*, the school district did not know and did not have reason to know Mr. Lukashevich was serving alcohol to students.

**a. Ms. Rosenberg Was Not In the Care, Custody Or Control of Soap Lake School District On The Night In Question**

"A duty is imposed by law on the school district to take certain precautions to protect the pupils in its custody from dangers reasonably to be anticipated." *Peck*, 65 Wn. App. at 292; see also, *McLeod v. Grant Cnty. Sch. Dist. No. 128*, 42 Wn.2d 316, 320, 255 P.2d 360, 362 (1953); *Briscoe v. Sch. Dist. No. 123, Grays Harbor Cnty.*, 32 Wn.2d 353, 362, 201 P.2d 697, 701 (1949); *Scott*, 50 Wn. App. at 44. A student is not in the custody of a school district simply because a district employee is present. *Scott,* 50 Wn. App. at 40-41.

In *Scott*, the court rejected the argument a school district was liable simply because a district employee was present when the intentional tort was committed. 50 Wn. App. 37. In *Scott*, a teacher provided alcohol to,

and engaged in a sexual relationship with, a student. The drinking and sexual encounters occurred off-campus and not during school hours. The court concluded the school district was not be liable for the teacher's conduct because it was "outside [the school's] responsibility." *Id.* at 45. *Scott* is notable because it rejects Ms. Anderson's argument that the District is liable simply because of Mr. Lukashevich's presence.

The *Chappel* factors are not satisfied because the party was not part of an extracurricular student body organization, the District had not assumed supervisory responsibility over the party, or provided tacit approval of the party or faculty participation of the same. The fact that the party was at Mr. Lukashevich's residence does not by itself mean that Ms. Rosenberg was in the care, custody, or control of the District, just as the student in *Scott* was not in the school district's custody when she had a romantic relationship with a teacher outside of school hours and premises.

Ms. Anderson asserts that the party was a " basketball party" to eat ice-cream and celebrate the on-court achievements of Ms. Rosenberg. *See Petition,* at 21-22. However, Ms. Anderson's Complaint describes the party as one involving Mr. Lukashevich, Ms. Rosenberg, Mr. Turchik, "and two other minors." CP 6, ln. 15. Obviously, the presence of four students of mixed gender does not evidence a basketball team party.

Unable to establish that the party at Mr. Lukashevich's house was a school sponsored activity or event, Ms. Anderson instead argues that the event was a "Coach Lukashevich sanctioned activity," *Petition*, at 15, 21. If Ms. Anderson's theory was the law, every employer would be vicariously liable for every criminal or intentional act of its employees, under the theory that the event was "employee sanctioned." That is not the law.

As a matter of law, Ms. Rosenberg was not in the care, custody and control of the District on the night in question. For this reason, the District did not owe a duty to Ms. Rosenberg at the party.

**b. The Party At Mr. Kukashevich's House Was Not Sponsored, Sanctioned, Or Supervised By the School**

While extra-curricular activities under the auspices of the school also fall within a school's duty to supervise, *Carabba*, 72 Wn.2d at 957, "at some point . . the event is so distant in time and place that the responsibility for adequate supervision is with the parents rather than the school." *Scott*, 50 Wn. App. at 44. Here, there is no evidence that Mr. Lukashevich's "party" was a school sponsored event or activity.

Ms. Anderson places great reliance on *Rhea*, and claims it stands for certain positions that are simply not true. For example, Ms. Anderson incorrectly states that under *Rhea*, "[a] school district can be liable for non-school sponsored activities if a school employee is present at the activity or

in the planning of the activity." *Petition*, at 22. As discussed *supra*, *Rhea* opinion reveals no such language.

The first question the *Rhea* court asked was "whether the District breached a duty to [the student] and can be held liable for negligence." *Rhea*, at 559. The court answered this question by noting a school district can be liable in tort only when students are in its "custody" or when "schools *supervise* and *exercise control* over extracurricular activities." *Id.* at 560 (emphasis added). The court then stated: "When a school district's defense is that the off-premise activity was ultra vires the question becomes whether a tort was committed within the scope of the school's authority." *Id.* (internal citations omitted). The court then cited *Chappel v. Franklin Pierce Sch. Dist. 402*, 71 Wn.2d 17, 426 P.2d 471 (1967), to determine if an activity was within the school's authority. The Court stated:

> Where...the evidence reveals that educational and cultural values inhere in the normal activities of an extracurricular student body organization, and the school administration has assumed supervisory responsibility over the organization which, in turn, extends tacit approval of and faculty participation in planning and supervising . . . the school district cannot relieve itself of potential tort liability . . . .

*Id.* at 561 (citing *Chappel*, 71 Wn.2d at 24).

The *Rhea* court concluded that the school district's non-action after being told of the party did not equal "tacit approval and faculty participation in the activity." *Id.* at 561. The party was not within the authority of the

school, as no district employee was at the party or participated in its planning, and a faculty advisor disapproved of the party. *Id.*

There is simply no evidence which remotely suggests that the District knew or should have known of the party or that the party was sponsored, sanctioned or supervised by the District. Contrary to Ms. Anderson's argument, and absent from the *Rhea* opinion (or any other authority), is any rule indicating that the mere presence of a school employee automatically makes the event come under the school's authority.

### c. The Activities Code Is Not A Contract And Does Not Impose A Duty Upon The School District To Supervise Students During Non-School-Related Activities

The duty owed by school districts to students is generally "one of reasonable care, which is to say that the district, as it supervises the pupils within its custody, is required to exercise such care as a reasonably prudent person would exercise under the same or similar circumstances." *Peck*, 65 Wn. App. at 292.

The Activities Code is not a contract. Rather, it is a set of rules which students are to follow while participating in athletics, or as the Court of Appeals stated, "the Activities Code is an *agreement* between SLSD and its student athletes, it bears none of the hallmarks of a legal *contract*." *Opinion*, at 5 (emphasis original). For example, in addition to prohibiting alcohol, the Activities Code requires participants to practice good sportsmanship, sets

forth how students will be transported to and from contests, requires class attendance, and requires students to maintain academic eligibility. CP 86-88. There is no language in the Activities Code stating that the District intended to create legal duties to assure student compliance with the same.

Ms. Anderson's argument that a code of conduct signed by students imposed on the District tort and/or contractual duties would lead to unwieldy results. Further, Ms. Anderson's argument would make the District liable for not doing enough to prevent students from skipping school or engaging in unsportsmanlike conduct during competition. This result is obviously absurd, unworkable and not supported by any legal authority and summary judgment was appropriate.

### ii. The Record Is Devoid Of Any Evidence That Soap Lake School District Negligently Hired, Retained Or Supervised Igor Lukashevich

To establish a negligent hiring claim Ms. Anderson must show the District "knew or in the exercise of ordinary care should have known that [Mr. Lukashevich] was unfit for employment" as a basketball coach. *Peck*, 65 Wn. App. at 289. To establish a negligent retention claim Ms. Anderson must show the District knew or should have known of some matter during Mr. Lukashevich's employment that made him unfit to continue working for the District. *Id.* at 290-91. Similarly, to establish a claim for negligent supervision, Ms. Anderson must show the District knew, "or in the exercise

of reasonable care" should have known that Mr. Lukashevich was "a risk to its students." *Id.* at 293.

There is no evidence in the record supporting the allegation that the District was negligent in hiring, supervising or retaining Mr. Lukashevich. Prior to being hired, Mr. Lukashevich was interviewed by Mr. Kemp, had played basketball for six years, and had been the Soap Lake JV assistant coach. CP 368-369, 371. Mr. Kemp had no knowledge Mr. Lukashevich spent time with students outside of school when he was employed as a coach. CP 407. During Mr. Lukashevich's employment Mr. Kemp met with Mr. Lukashevich on repeated occasions and dropped in on practice . CP 383, 387. Mr. Kemp's testimony provides no evidence which supports Ms. Anderson's claims of negligent hiring, supervision, and retention.

Instead of providing actual evidence to support her claim of negligent hiring, supervision and retention, Ms. Anderson recites a list of events Mr. Kemp could not remember from four years prior to his deposition. For example, Ms. Anderson argues: "Mr. Kemp could not provide any written policies on the hiring process, nor could he recall what any of the procedures and policies were." *Petition*, at 18.

Putting aside the issue of whether or not Mr. Kemp's inability to remember events that occurred four years earlier is relevant, none of these foregoing arguments is relevant to the issue of whether the District knew or

should have known that Mr. Lukashevich was "unfit" to coach, either at the time he was hired or at any time prior to the accident in question. In the absence of evidence that Mr. Lukashevich was "unfit" to coach, evidence that additional supervision could have been provided is equally irrelevant.

The District is not liable simply because an employee, acting outside the course and scope of his employment, provided alcohol to a student. Rather, Ms. Anderson was required to establish that the District either knew that Mr. Lukashevich was providing alcohol to minors, or that it should have known the same. Ms. Anderson failed to establish the same, requiring dismissal of her negligent hiring and supervision claim.

## III. CONCLUSION

The trial court properly granted the District's motion for summary judgment because there are no facts which indicate Ms. Rosenberg was in the care, custody or control of the District at the off campus late-night weekend party which was not sponsored, sanctioned or supervised by the District. There was likewise no evidence that prior to the night in question, the District knew or should have known that Mr. Lukashevich was "unfit to coach. Therefore, as a matter of law, the District did not owe Ms. Rosenberg a duty sounding in tort on the night in question. Further, the District did not owe any contractual or tort duties to Ms. Rosenberg pursuant to her

agreement to abide by the Activities Code. The Court of Appeals properly affirmed the trial court decision.

Ms. Anderson argues the District owed a duty of care simply because a District employee was present at the party even though there is no evidence the party was a school function and it is clear Mr. Lukashevich was acting outside the scope of his employment. This is not the law and cannot be the law because it would place impossible obligations and burdens on school districts. *See, e.g., Travis*, 128 Wn. App. at 238 ("A school district in not an insurer of the safety of its pupils.").

Finally, Ms. Anderson's argument that the District owed Ms. Rosenberg a duty pursuant to Ms. Rosenberg's agreement to abide by the Activities Guide is without support in the law. Indeed, Ms. Anderson cites to no legal authority supporting this novel legal theory.

Both the trial court and Court of Appeals thoughtfully considered these issues and properly granted and upheld summary judgment, respectively. The District respectfully requests this Court affirm the opinion of the Court of Appeals.

DATED this 15th day of February, 2017.

EVANS, CRAVEN & LACKIE, P.S.

By _____
MICHAEL E. McFARLAND, #23000
Attorney for Respondent

## CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 15th day of February, 2017, the foregoing was delivered to the following persons in manner indicated:

| | | |
|---|---|---|
| ***Counsel for Plaintiff*** | | |
| Doug Phelps | Via Regular Mail | ☐ |
| Phelps and Associates | Via Certified Mail | ☐ |
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Kimberley L. Mauss