NO. 97733-0

SUPREME COURT
OF THE STATE OF WASHINGTON

BELLEVUE ATHLETES ALUMNI GROUP, An Association of Members, individuals

Appellant,

v.

BELLEVUE SCHOOL DISTRICT 405, a public school district; and WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, a nonprofit corporation,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Bellevue High School ("BHS") interscholastic football program—operated by Respondent Bellevue School District ("District")—was investigated and sanctioned for athletic rule violations in 2016 by its athletic conference and the Washington Interscholastic Activities Association ("WIAA"). In September 2017, the District asked the WIAA to lift penalties related to post-season play. The WIAA Executive Committee agreed to do so, but also vacated the BHS state football playoff finishes from 2012, 2013, and 2014.

Petitioner Bellevue Athletes Alumni Group ("Group") is an association of twelve (12) former high school student-athletes from BHS who, pursuant to the judicial review procedure of Chapter 28A.645 RCW appealed the WIAA's decision to vacate the BHS football playoff finishes. The District moved to dismiss the Group's appeal under CR 12 (b) (6) on the grounds that neither the Group nor the individual students comprising the Group were "aggrieved persons" with standing to appeal athletic sanctions imposed on the school's interscholastic program. The superior court granted the District's motion and dismissed the appeal. The Court of Appeals affirmed the trial court in an unpublished decision. *Bellevue Athletes Alumni Group v. Bellevue School District*, No. 78133-2-I (Slip Op. filed September 3, 2019).

The Group now petitions this Court for review, asserting the following issues: (1) whether the appellate opinion is in conflict with a decision of the Supreme Court; (2) whether the appellate opinion is in conflict with state statutes; and (3) whether the appellate court advanced a statutory interpretation that omitted parties the Legislature intended to be able to appeal athletic sanctions. Petition for Review to Supreme Court, at 3 (hereinafter "Petition").

The issues asserted by Petitioner are without merit. The appellate opinion does not conflict with any decision of this Court. Moreover, the appellate opinion is not in conflict with either the interscholastic athletic participation provisions of Chapter 28A.600 RCW or the judicial review process set forth in Chapter 28A.645. Finally, the appellate opinion was consistent with the statutory language of RCW 28A.645.010 and the caselaw interpreting that provision. The requirement that appellants be "aggrieved" as that term has been defined by the courts of this state means that the students in this case must have a personal right or pecuniary interest affected by the sanction they wish to appeal, and the Petitioners failed to establish either. It should be noted as well that only the first asserted issue identified above is a consideration that justifies Supreme Court review under RAP 13.4 (b). There is no claim that this decision was in conflict with a published decision of the Court of Appeals, nor does this

matter involve either a "significant question of law" or a matter of "substantial public interest." Petitioner's review should be denied.

II. ISSUE STATEMENT

1. Have Petitioners asserted a permissible basis for Supreme Court review under RAP 13.4 (b), and is any such consideration supported by the facts of this case?
2. Did the Court of Appeals correctly hold that Petitioners were not aggrieved parties for purposes of RCW 28A.645.010 when the Group failed to establish an affected personal right or a pecuniary interest in the athletic sanctions imposed by the WIAA on a high school's interscholastic football program?

III. STATEMENT OF THE CASE

The facts of this case are concisely stated in the appellate opinion. *See Bellevue Athletes Alumni Group*, slip op. at 1-3. The Bellevue School District requested that the WIAA investigate alleged rule violations within the BHS football program. The WIAA issued an investigative report in April 2016, concluding that "the actions of BHS coaches, the deliberate ignorance of District and BHS administrators, and the complicity of the Bellevue Wolverine Football Club ("Booster Club") and its members [] have unfairly tilted the football field in favor of the Bellevue High School

football program to the obvious detriment of opponents." *Bellevue Athletes Alumni Group,* slip op. at 2. The WIAA prohibited BHS's football program from participating in post-season play for two years.

In September 2017, the District asked the WIAA to reconsider the decision prohibiting the BHS football program from competing in post-season play. The WIAA lifted the ban, but imposed substitute penalties that vacated BHS's 2012, 2013, and 2014 football playoff finishes. *Bellevue Athletes Alumni Group,* slip op. at 2.

Petitioners filed an appeal of the WIAA decision in King County Superior Court under RCW 28A.645.010.[1] The District moved to dismiss the appeal pursuant to CR 12 (b) (6), since neither the Group nor the individual former students were aggrieved persons under RCW 28A.645.010 and accordingly lacked standing to appeal. The trial court dismissed the claims and the Court of Appeals affirmed that dismissal. The appellate court stated:

> There was no testimony or documentation offered by any of the one dozen former student athletes named in the Group's pleadings identifying a personal right or pecuniary interest that was impacted by this decision to vacate the titles, apart from the unsupported claim of a "right to use" the title wins and a generalized assertion at oral argument that their "accomplishments were diminished" . . . . The Group has not shown that any present personal rights or pecuniary interests

[1] Under RCW 28A.600.200 (3) (d), any penalizing sanction from the WIAA is considered a decision of the school district conducting the activity and may be appealed pursuant to the judicial review procedures of RCW 28A.645.010 through 28A.645.030.

> were affected by the vacation of BHS's past football titles. Accordingly, the Group is not an aggrieved party withstanding to appeal under RCW 28A.645.010.

*Bellevue Athletes Alumni Group, s*lip op. at 8.

Petitioners now seek to have this decision reviewed by the Supreme Court.

IV. ARGUMENT

Petitioners have failed to assert a valid basis for review, since the Court of Appeals' decision is not in conflict with any decision of this Court. Moreover, the Court of Appeals correctly determined in a well-reasoned opinion that neither the former individual high school students who comprise the Group nor the Group itself is an aggrieved party with standing to assert a RCW 28A.645.010 appeal of the athletic penalties imposed by the WIAA on the BHS interscholastic football program.

A. Review should be denied because Petitioners fail to state adequate grounds under RAP 13.4 (b) justifying Supreme Court review of the appellate decision.

Under RAP 13.4 (b), a petition for review will be accepted by the Supreme court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Petitioners do not claim that the decision in this case is in conflict with another published decision of the Court of Appeals, nor do they assert that this case involves either a significant question of law or an issue of substantial public interest. The sole issue asserted by Petitioners that corresponds to the requirements of RAP 13.4 (b) is a claim that the Court of Appeals decision is in conflict with another decision of this Court. Brief of Petitioner at 1. According to Petitioners, the appellate court's determination that Chapter 28A.600 RCW and Chapter 28A.645 RCW are ambiguous regarding who is "aggrieved" by programmatic athletic penalties and entitled to a remedy is in conflict with the statutory construction principles for interpreting plain and unambiguous language contained in *State v. Keller,*143 Wn.2d 267, 19 P.3d 1030 (2001). That assertion, however, is meritless.

Keller involved the interpretation of persistent offender sentencing language from Chapter 9.94A RCW. *State v. Keller,* 143 Wn.2d 267, 270-71, 19 P.3d 1030 (2001). This Court rejected Keller's proposed statutory construction in that case and held that when the language of a statute is clear, plain, and unambiguous the meaning is derived from the words of the statute itself. *State v. Keller,* 143 Wn.2d at 276-77, 19 P.3d at 1035. The Court also held that construction must be avoided that yields "unlikely, strange or absurd consequences." *State v. Keller,* 143 Wn.2d at

277, 19 P.3d at 1036 (quoting *State v. Contreras,* 124 Wn.2d 741, 747, 880 P.2d 100 (1994)).

The Court of Appeals' decision in this case does not conflict with this holding in *Keller*. In fact, the appellate court was correct: neither Chapter 28A.600 RCW nor Chapter 28A.645 RCW expressly delineates who is an "aggrieved" party with standing to appeal, nor do those provisions expressly identify who is entitled to a remedy under 28A.600.200 (3) (d) when an interscholastic program—as opposed to an individual coach, administrator, or student—is penalized with athletic sanctions. Petitioners propose that *any* student may appeal *any* athletic penalty imposed by the WIAA under Chapter 28A.600 RCW if the student believes that the penalty adversely diminishes his or her "accomplishments".

However, there are several problems with Petitioner's argument. First, RCW 28A.600.300 does not explicitly support Petitioners' theory with clear, plain, and unambiguous language. Even Petitioners implicitly acknowledge this—Petitioners' interpretation of who should be permitted to appeal derives not from the statutes themselves, but instead from a statement of legislative intent issued when the provisions of Chapter 28A.600 RCW were amended in 2012. *See* Laws of 2012, ch. 155 § 1; Brief of Petitioners at 3.[2] Absent a situation involving clear, plain and

[2] When the statute is ambiguous the court turns to principles of statutory construction, legislative history, and relevant case law to determine the legislature's intent. *Cockle v. Dep't of Labor and Indus.,* 142 Wn.2d 801, 808. 16 P.3d 583 (2001).

unambiguous statutory language, the holding of *State v. Keller* is inapposite to Petitioner's arguments and not in conflict with the Court of Appeals' decision. [3] If there is no conflict with cases from the Supreme Court, there is no basis to review the Court of Appeals' decision in this case.

Second, Petitioners' claim that RCW 28A.645.010 is clear and unambiguous regarding who is an aggrieved party in any given situation is not consistent with prior Washington decisions. In *Briggs v. Seattle School District No. 1*, 165 Wash. App. 286, 266 P.3d 911 (2011), the court implicitly recognized that the statute was not clear regarding who was an "aggrieved" person with standing to appeal. Instead, the court in *Briggs* turned to the definition of an aggrieved party from RAP 3.1[4] and clarified that, under RCW 28A.645.010, aggrieved person is one whose personal rights or pecuniary interests have been affected. *Briggs v. Seattle School District No. 1*, 165 Wash. App. At 294.

Third, as discussed further below, Petitioners' theory that "diminished accomplishments" in the present case correlates to an affected "personal right" or a "pecuniary interest" is simply illogical.

Because the Court of Appeals' decision was not in conflict with the statutory construction principles of *State v. Keller*, there is no basis on

[3] It should be noted that the Court of Appeals explicitly acknowledged that if "the meaning of the statute is 'plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *Bellevue Athletes Alumni Group*, slip op. at 4 (citing *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 432, 395 P.2d 1031 (2017)).

[4] *Briggs* imported the language of RAP 3.1 by citing *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003)

which this Court should accept review as requested. Review should be denied.

B. Even if there were a basis for Supreme Court review such review should be denied—the Court of Appeals' decision in this case was a well-reasoned application of relevant authority.

Even if this Court had a basis under RAP 13.4 (b) to contemplate review, such review should be denied. The Court of Appeals' decision in this case was well-reasoned and properly applied the relevant authority in rejecting Petitioners' claims.

A school district's board of directors may delegate the control, supervision, and regulation of interscholastic athletic activities to the WIAA or any other voluntary nonprofit league or conference. RCW 28A.600.200. The WIAA, in turn, is authorized to impose penalties for rule violations upon coaches, district administrators, school administrators, or students as appropriate to punish an offending party or parties. RCW 28A.600.200 (3) (a). The WIAA may only impose penalties on individual students when a student knowingly violated the rules or when "a student gained a significant competitive advantage or materially disadvantaged another student through a rule violation." RCW 28A.600.200 (3) (b).

Any penalizing sanction from the WIAA is considered a decision of the school district conducting the activity and may be appealed pursuant

to the judicial review procedures of RCW 28A.645.010 through 28A.645.030. RCW 28A.600.200 (3) (d).

The issue of standing is critical to appealing an athletic sanction as it is in any appeal. Not every dissatisfied, disgruntled, or unhappy person affiliated with a school's penalized interscholastic program has the right to appeal such penalties that are imposed on the school itself. "An aggrieved party is not one whose feelings have been hurt or one who is disappointed over a certain result." *State v. Taylor*, 150 Wn.2d at 604, 80 P.3d at 608; *see also State ex rel. Simeon v. Superior Court for King County*, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944) ("the mere fact that one may be hurt in his feelings, or be disappointed over a certain result, or feels that he has been imposed upon . . . does not entitle him to appeal. He must be 'aggrieved' in a legal sense."). Instead, RCW 28A.645.010 requires that an aggrieved party be one whose personal right or pecuniary interest have been affected. *Briggs v. Seattle School District No. 1*, 165 Wash. App. at 294, 266 P.3d 911 (2011) (*citing State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003)).

The Court of Appeals correctly concluded that the Petitioners failed to prove this essential requirement for standing. Petitioners argued that they were aggrieved because they each participated in the interscholastic program, and for each individual student who did so "'a title win, once earned, is a right to use that title that was granted by the WIAA on the night of the championship game' on a resumé, on a college application, for career advancement, or 'as they saw fit through the rest of

their lives.' *Bellevue Athletes Alumni Group,* slip op. at 7. However, the Court of Appeals correctly noted two critical flaws in this argument: first, Petitioners cited no authority for this claim and the court assumed "that counsel, after a diligent search, has found none." *Bellevue Athletes Alumni Group,* slip op. at 7-8 (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). Second, Washington courts have recognized that participation in interscholastic sports is not a fundamental right or a constitutionally protected property interest. *Taylor v. Enumclaw School Dist. No. 216*, 132 Wn. App. 688, 697, 133 P.3d 492 (2006). If an individual student has no protected personal right or property interest in participating in interscholastic sports, it is difficult to comprehend how the collective success of a large team suddenly morphs into a personal right or protected interest for each individual who has a role on that team. Petitioners made no attempt to clarify this logical incongruity.

The statutory interpretation proposed by Petitioners runs contrary to an accepted understanding of what constitutes an affected, personal right. This attempt to expand the notion of who is "aggrieved" for appellate purposes would open the floodgates regarding who could bring appeals or seek judicial review. There is no legitimate basis for expanding the concept of an aggrieved party for purposes of bringing athletic appeals under Chapter 28A.600 RCW and Chapter 28A.645 RCW. Petitioner's request for review of the Court of Appeals' decision should be denied.

V. CONCLUSION

For the reasons stated above, the Respondent respectfully requests that this Court deny the Group's petition for review. There is no genuine basis for such a review under RAP 13.4 (b). Even if there were, the Court of Appeals' decision was a well-reasoned and sound application of authority regarding who is an aggrieved party with standing to appeal. That decision should be permitted to stand.

RESPECTFULLY SUBMITTED this 4th day of November, 2019.

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By: */s/Charles W. Lind*
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CERTIFICATE OF SERVICE

I, Christopher J. Moore, hereby certify that I served the foregoing Respondent's Answer to Petition for Review on the following individuals:

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[X] Electronic Service via Washington State Supreme Court Portal

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

DATED this 4th day of November, 2019, at Seattle, Washington.

/s/Christopher J. Moore
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