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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOE 11 AND SEATTLE JOHN DOES 6 and 9,

Appellants,

BELLEVUE JOHN DOES 1-10, FEDERAL WAY JOHN DOES 1-5
AND JANE DOES 1-2 AND SEATTLE JOHN DOES 1-5, 7-8 and 10-12
AND JOHN DOE,

Plaintiffs/ Non-Appellants/ Cross-Respondents,

v.

BELLEVUE SCHOOL DISTRICT #405, FEDERAL WAY SCHOOL
DISTRICT #210, AND SEATTLE SCHOOL DISTRICT #1,

Respondents; AND

THE SEATTLE TIMES COMPANY,

Respondent/ Cross-Appellant.

BRIEF OF AMICUS CURIAE
WASHINGTON EDUCATION ASSOCIATION
IN SUPPORT OF PETITION FOR REVIEW
OF PETITIONERS BELLEVUE JOHN DOES 1-10, FEDERAL WAY
JOHN DOES 1-5 AND JANE DOES 1-2 AND SEATTLE JOHN DOES
1-5, 7-8 and 10-12 AND JOHN DOE

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I. INTRODUCTION

Amicus Washington Education Association urges this court to review a confused and inconsistent decision of the Court of Appeals. This case satisfies the requirements of RAP 13.4(b). The Court of Appeals' decision is in conflict with a decision of the Supreme Court and with a decision of another division of the Court of Appeals. This case also presents an issue of substantial public interest. Thus, this Court should accept review of this case.

II. ARGUMENT

A. SOME OF THE APPELLANTS WOULD HAVE FACED A DIFFERENT OUTCOME IN DIVISION TWO.

Bellevue John Does v. Bellevue School District No. 405, 129 Wn.App. 832, 120 P.3d 616 (2005) is in conflict with a decision of Division Two, *City of Tacoma v. Tacoma News, Inc.* (1992) 65 Wash.App. 140, 827 P.2d 1094, *rev. den'd.* 119 Wash.2d 1020, 838 P.2d 692 (1992) which held that police department records regarding unsubstantiated allegations of child abuse were not of legitimate public concern under RCW 42.17.255. The Court conducted an *in camera* review of the records and determined that the department's failure to substantiate allegations did not result from lack of full investigation. The

Court held if information remains unsubstantiated after reasonable efforts to investigate it, the records are exempt from disclosure. *Id.*

Division One took a markedly different approach, finding that even where an allegation is unsubstantiated after adequate investigation, the accused teacher's name should be disclosed, stating:

“[U]nsubstantiated” often means only that an investigator, faced with conflicting accounts, is unable to reach a firm conclusion about what really happened and who is telling the truth. Especially when the conduct reported is a fleeting touch, a comment seemingly off-color or directed at a student's physical appearance, or a habit of writing personal notes, it is possible that the accuser misunderstood the words, misinterpreted the intent, or even fabricated the entire event. But it is also possible that the accuser was accurately reporting inappropriate conduct. Where that possibility exists, the public has a legitimate interest in knowing the name of the accused teacher.

Bellevue John Does, 129 Wash.App. at 856.

It is the conduct of the school district's investigation that is of legitimate public concern. If the school district conducted an adequate investigation and found the allegations to be unsubstantiated, that should be the end of the story. There is no additional light shed on the conduct of the school district's investigation by identifying the name of the person investigated when the results of the investigation are that the allegations are false or unsubstantiated. The identity of the falsely accused is not a legitimate matter of public concern.

The case of Seattle John Doe 5 illustrates a situation where an individual's name is disclosed because that teacher lives and works within the jurisdiction of Division One but whose name would not be disclosed if the teacher lived in the geographic boundaries of Division Two. Division One ordered disclosure of the name of Seattle John Doe 5 even though the school district found that the allegations were unsubstantiated after a thorough investigation. *Id.*, at 851. The accusers recanted and admitted their fabrication of the allegations. *Id.* The allegations were clearly false. Yet, Division One, applying its own newly articulated standard determined that Seattle John Doe 5 did not meet the standard of "patently false" and required disclosure of this person's name.

Under *Tacoma News*, a different standard would be applied and the name of the teacher simply would not be released. In *Tacoma News*, the court determined that the agency records gave "no hint of a less than adequate investigation" and concluded that the allegation was unsubstantiated. 65 Wn.App. at 151-2. Consequently, Division Two held that there was no legitimate public concern in the release of the requested information.

The trial court herein applied the same analysis as Division Two. The trial court found that for Petitioners Bellevue John Does 1, 2, 3, 4, 6, 7, 9, Federal Way John Does 2, 3 and Seattle John Does 3, 5 and 10, the

allegations were determined to be unsubstantiated or false after an adequate investigation. Thus, the trial court found there was no legitimate public concern in disclosing the names of these Petitioners.

This Court must accept review of this case to resolve the fact that as a result of Division One's decision, employees living and working in different parts of the state are treated differently and are held to different standards.

B. DIVISION ONE'S DECISION IS IN CONFLICT WITH A DECISION OF THIS COURT.

In *Dawson v. Daly*, 120 Wash.2d 782, 845 P.2d 995 (1993), this Court held that RCW 42.17.010(11) contemplates balancing of the public interest in disclosure against the public interest in the "efficient administration of government." The *Dawson* court held that requiring disclosure where the public interest in efficient government could be harmed more than the public would be served, is unreasonable. The Court held that performance evaluations were not subject to disclosure because such disclosure would harm the efficient administration of government by harming employee morale and making it less likely supervisors would act with candor. *Id.*, at 798. This Court acknowledged that:

Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in

having the business of government carried on efficiently and without undue interference.

Id., at 799, citing *Stone v. Consolidated Pub'g Co.*, 404 So.2d 678, 681 (Ala.1981).

Division One erroneously found the harm to the efficient administration of government from identifying the name of the teacher against whom an unsubstantiated allegation is made to be less than the benefit to the public interest in releasing the name. Division One articulated the harm as increased grievances and litigation but stated that the public would benefit by becoming aware of a potential “pattern” of unsubstantiated allegations:

If a teacher’s record includes a number of complaints found to be “unsubstantiated,” the pattern is more troubling than each individual complaint. Yet, if the teacher’s name in each individual complaint is withheld from public disclosure, the public will not be able to see any troubling pattern that might emerge concerning that teacher.

Bellevue John Does, *supra* at 856.

First, Division One greatly discounts the harm to the efficient administration of government by failing to consider some of the harms recognized by this court in *Dawson*. Substantial damage to a school system and to the teacher will occur from publication of allegations that remain unsubstantiated after an adequate investigation. As this Court appropriately noted with respect to performance evaluations:

[D]isclosure could cause even greater harm to the public by making supervisors reluctant to give candid evaluations. “Disclosure will be likely to chill candor in the evaluation process.” The quality of public employee performance would, therefore, suffer because the public employees would not receive the guidance and constructive criticism required for them to improve their performance and increase their efficiency. These harms outweigh the public interest in disclosure, at least in a case such as this one where our in camera review, conducted at the request of the prosecutor, revealed that Stern’s evaluations do not discuss specific instances of misconduct or public job performance.

Dawson, supra, at 799-800. (Internal citations omitted).

The benefit to the system that can be attributed to “letters of direction” is that they offer just the type of guidance and constructive criticism that this Court referenced in *Dawson, supra*. These simple letters offer advice but are not linked to any substantiated specific instance of misconduct. Division One distinguishes *Dawson* and *Brown v. Seattle Public Schools*, 71 Wash.App. 613, 860 P.2d 1059 (1993), stating that the cases at bar involve complaints of misconduct while *Dawson* and *Brown* contain routine performance evaluations. However, this distinction is meaningless. First, the concerns that the District addressed in *Brown* may have been prompted by complaints, as the case is silent on this fact. Second, and more significantly, the letters of direction in the cases at bar are intended to improve performance and provide guidance like the documents addressing the concerns about the principal in *Brown*.

Division One also erroneously characterizes “allegations of misconduct” as “instances of misconduct” despite the fact that there is no finding of misconduct. If Division One’s decision stands, these letters of direction will cease to function in a useful manner.

A teacher whose name is associated with an unsubstantiated allegation will become the subject of a rumor mill. Parents’ attitude toward the teacher may change based on unsubstantiated allegations. When each allegation is fully investigated and found to be unsubstantiated, there is nothing about a pattern of unsubstantiated allegations that makes a person guilty of any or all of them. It is just that rumor mill that this Court should desire to quash.

C. THIS PETITION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT MUST BE ADDRESSED BY THIS COURT.

Bellevue John Does v. Bellevue School District No. 405 has application to all types of public employees, not just teachers. This case changes the landscape for the way that public employers deal with unsubstantiated allegations of misconduct and the expectations of public employees when facing such allegations.

Division One appropriately noted, when discussing Seattle John Doe 1, a teacher against whom “patently false” and fantastic allegations had been made:

[W]hen information about an individual is protected by the right to privacy, the individual—not anyone else—gets to decide whether clearing the air is a good idea. Neither the existence of a school district file documenting the investigation nor the circulation of rumors about who was involved, justifies forcing Seattle John Doe 1 to be publicly linked, without his consent, with these highly offensive allegations that are patently false. Public disclosure of his name would serve no interest other than gossip and sensation.

Bellevue John Does, *supra* at 853-4.

This same rationale should apply to all employees against whom allegations have been made which remain unsubstantiated or false after adequate investigation. This same rationale should apply to all such teachers in all parts of the state.

Division One erroneously relies upon the public interest articulated in *Brouillet v. Cowles Pub. Co.*, 114 Wash.2d 788, 791 P.2d 526 (1990) when articulating the public's interest in the information. stating:

The public requires information about the extent of **known** sexual misconduct in the schools, its nature, and the way the school system responds in order to address the problem.

Bellevue John Does, *supra* at 840, 848, citing *Brouillet*, *supra* at 798. (Emphasis added).

However, in the cases of the Petitioners herein, there is no known sexual misconduct, only unsubstantiated or false allegations of such. Consequently, Division One misapplied the public policy expressed in

Brouillet, supra. There is no legitimate public interest in the disclosure of the names of these Petitioners.

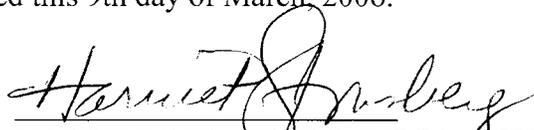
Moreover, Division One creates what appears to be a higher standard of “patently false” but gives no guidance as to its elements. The only cases which appears to meet this very high standard are those where the initial allegations are so outrageous that they could not possibly be true. The cases of Seattle John Doe 1 and Seattle John Doe 7 are two such examples. However, the case of Seattle John Doe 5, which involved an allegation of improper touch where the student recanted and the District found the accusation to be unsubstantiated, does not meet that threshold.

This Court must accept review to provide guidance to agencies and the lower courts in the correct and consistent application of the public disclosure laws to those who face allegations of sexual misconduct that remain unsubstantiated or false after adequate investigation.

III. CONCLUSION

For the foregoing reasons, WEA respectfully requests that this Court grant the Petition for Review in this matter.

Respectfully submitted this 9th day of March, 2006.


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BY C. J. FERRIER

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the following is true and correct. CLERK

1. I am over 18 years of age and work for the law office of Harriet Strasberg.
2. On March 9, 2006, I caused to be served a true and correct copy of the Washington Education Association's Motion to File Amicus Curiae Brief and the Brief of Amicus Curiae Washington Education Association in Support of the Petition For Review of Petitioners Bellevue John Does 1-10, Federal Way John Does 1-5 and Jane Does 1-2 and Seattle John Does 1-5, 7-8 and 10-12 and John Does on the following via the United States Postal Service ("USPS"):

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DATED this 9th day of March, 2006 at Olympia, Washington.



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