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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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Case No. 32714-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

CHERYL DELYRIA and JUDY KOCH, *Appellants*,

v.

STATE OF WASHINGTON, WASHINGTON SCHOOL FOR THE
BLIND, *Apellee*.

BRIEF OF APPELLANT

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1. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The trial court erred when it concluded that plaintiffs were not entitled to salary equal to the salary paid to Vancouver School District teachers, including salary paid under RCW 28A.400.200(4), and thereby granted summary judgment to Defendants.

Assignment of Error No. 2

The trial court erred when it concluded that plaintiffs were not entitled to salary equal to the salary paid to Vancouver School District teachers, including salary paid under RCW 28A.400.200(4), and thereby denied Plaintiffs' Motion for Summary Judgment.

Issues pertaining to Assignments of Error No. 1 and No. 2

Whether money paid to the teachers at the Vancouver School District for extra time, responsibility and incentive, (TRI) under RCW 28A.400.200(4) is "salary" for purposes of determining salary for the State School for the Blind teachers under the pay parity statute. RCW 72.40.028.

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2. INTRODUCTION

Plaintiffs Delyria and Koch are educators at the Washington State School for the Blind (WSSB) in Vancouver, Washington. CP 48. They brought this action to enforce their statutorily-granted right to receive a salary equal to employees in the Vancouver School District (VSD). CP 72 - 76. For the past seven years, Delyria and Koch each have received a salary diminished by an average of \$2,710 per year from the salary received by similarly-qualified employees in VSD. This is because VSD teachers, unlike Delyria and Koch, have received additional salaried compensation in the form of supplemental contracts, which compensates VSD teachers for time, responsibility, and incentives (TRI or TRI salary). RCW 28A.400.200(4). Although the legislature defined these TRI contracts as salary, and Delyria and Koch have a workload greater than or equal to most VSD teachers, Washington School for the Blind and the trial denied this salaried compensation despite the clear language of the RCW 72.40.028 requiring equalization of salary between WSSB and VSD teachers.

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3. STATEMENT OF THE CASE

This case requires a straightforward application of an unambiguous statute. RCW 72.40.028 requires that Washington State School for the Blind ("WSSB") teachers receive a salary equivalent to that received by teachers in the Vancouver School District ("VSD"). This is known as the "pay parity" statute. It is undisputed that the State has not been paying WSSB teachers the same salary as VSD teachers. Specifically, the State has not paid WSSB teachers the equivalent of the supplemental contract salary, known as TRI salary, that VSD teachers receive pursuant to RCW 28A.400.200(4). Therefore, Delyria and Koch brought this action to recoup those unpaid wages. However, the trial court held that the TRI pay was not "salary" under the pay parity statute. In this appeal, Delyria and Koch ask this court to reverse the trial court's grant of summary judgment to defendant and rule that, as a matter of law, WSSB teachers must receive the same salary that similarly situated Vancouver teachers receive, including an equivalent to the supplemental TRI salary. Because this case presents purely a question of statutory construction, this court reviews the trial court's holding *de novo*.

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4. ARGUMENT

A. Summary of Argument

This case turns on this court's interpretation of RCW 72.40.028:

"All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the state board of education or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty." (Emphasis added)

The plain text of this statute is unambiguous as a matter of law.

The sole reasonable interpretation of RCW 72.40.028 is that teachers with similar backgrounds and experience at WSSB and VSD shall receive equal salary. There is no dispute that similarly situated teachers at WSSB receive a lower salary than they would receive if they were working at VSD. Delyria and Koch earned \$56,588 last year as WSSB. CP 38. They would have earned \$60,076 if they were at VSD. CP 38. Since 1998, Delyria and Koch have each suffered a loss of \$18,976, relative to the salary which they (or any other employee of like background and

experience) would have received at VSD. *See* CP 37. The difference between the WSSB salary and the VSD salary is that WSSB does not pay an equivalent to the supplemental salary known as TRI salary. Under the plain language of RCW 72.40.028, Delyria and Koch are entitled to be paid whatever they would be paid at VSD.

However, the trial court granted summary judgment by interpreting the pay parity statute's term "salary" as not including salary payments under the TRI statute.

Essentially, the trial court ruled that the TRI cash payment to VSD is not really "salary."¹ However, a plain-language reading of that statute

¹ Specifically, the trial court held:
"My interpretation of RCW 72.40.028 in regard to salaries is that at the time that this was enacted in 1980 there was no TRI payment situation, that that came about some five years later, and at the time that the TRI payments were instituted the legislature, if they had intended, could have clearly indicated that the State schools were a part of this. They did not do so. The term "salaries" is somewhat ambiguous, but my interpretation is that it meant a salary based upon one's similar background and experience, that is, having to do with the education and tenure or time in a particular position by teachers. The TRI payment situation is one that came about with the intent to deal with many of the realities of being a teacher and working long hours beyond what might be characterized as a formal workday or workweek, and I'm certainly not saying that teachers at the School for the Blind don't put in lots of extra time too, but there are other forms of compensation. Whether or not they're adequate, again, is not before this Court. It's my finding that RCW 28A.400.200 does not apply to

can leave no doubt that this sort of monthly cash payment is included as salary at VSD, the trial court's decision is inconsistent with the plain language of the statute. The ordinary meaning of "salary" is: "Fixed compensation for services, paid to a person on a regular basis." American Heritage Dictionary, 4th Edition. Since 1998, TRI has been paid to VSD employees in the form of fixed payments, thereby qualifying as "salary" under this plain language definition. See CP 35. Other Washington statutes support the plain language definition that "salary" means, simply, the amount an individual is paid. For example, both RCW 41.04.605 and RCW 41.05.011 state that "'Salary' means a state employee's or officer's monthly salary or wages." Because WSSB salaries are linked to VSD salaries under RCW 72.40.028, and VSD salaries include TRI payments under RCW 28A.400.200(4), it follows *a fortiori* that WSSB employees must also receive a TRI salary equivalent.

In sum, the plain text of RCW 72.40.028 requires WSSB teachers to be paid the same salary as their equals at VSD. This is a fundamental

the School for the Blind. The TRI payments are a separately administered program or/and involve separate issues, that there might very well be a need for a fix here, but I think it has to be addressed to the legislature rather than the Court." RP 23 - 24.

statutory requirement embodied in the plain text of the statute. Moreover, even if the court finds that the plain text of RCW 72.40.028 is ambiguous on its face and is subject to construction, the legislative history, context, and purpose requires that the court adopt Delyria and Koch's interpretation. For these reasons, this court should reverse the trial court and grant Delyria and Koch's summary judgment on liability.

B. Plain Language Requires WSSB to Pay Its Teachers the Same Salary as Similarly Situated VSD Teachers

The plain text of RCW 72.40.028 requires that Delyria and Koch be reimbursed for TRI salary, which VSD teachers received but Delyria and Koch were denied. "To determine legislative intent, courts look first to the language of the statute." State v. Watson, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). Courts "do not construe unambiguous statutes." Western Telepage, Inc. v. City of Tacoma, 140 Wn.2d 599, 608, 998 P.2d 884 (2000). "In judicial interpretation of statutes, the first rule is 'the court should assume that the legislature means exactly what it says. Plain words do not require construction.'" *Id.* at 609 (citing Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)). "Words are given the meaning provided by the statute or, in the absence of specific definition, their ordinary meaning." Western Telepage, Inc., 140 Wn.2d

599 at 609 (quoting State v. Smith, 117 Wn.2d 263, 271, 814 P.2d 652 (1991)). "Thus, when construing an unambiguous statute we look to the wording of the statute, not to outside sources such as legislative intent." *Id.* at 609.

RCW 72.40.028 concerns salaries and certification for teachers at the Washington School for the Blind, and provides in its relevant part:

"Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located." (Emphasis added.)

The plain language is clear: the salary for a teacher at WSSB is tied to the salary of a teacher at VSD with similar background and experience.

The ordinary meaning of these terms is clear. First, "conform to and be contemporary with" means that the salaries should be as nearly the same as practicable. "Conform" means "To correspond in form or character; be similar." American Heritage Dictionary, 4th Edition; "contemporary" means: "Belonging to the same period of time." American Heritage Dictionary, 4th Edition. Therefore, salaries paid to VSD and WSSB teachers must correspond in form, character, and time. "Salary" is defined as: "Fixed compensation for services, paid to a person on a

regular basis." American Heritage Dictionary, 4th Edition. Therefore, the plain meaning of this phrase is clear: WSSB teachers should be paid salaries which are the equivalent to VSD teachers, for the same period of time worked.

Since 1998, TRI has been paid to VSD employees in the form of fixed payments, thereby qualifying as "salary" under this plain language definition. *See* CP 35. Moreover, other Washington statutes support the plain language definition that "salary" means, simply, the amount an individual is paid. For example, both RCW 41.04.605 and RCW 41.05.011 state that "'Salary' means a state employee's or officer's monthly salary or wages." Because WSSB salaries are linked to VSD salaries under RCW 72.40.028, and VSD salaries include TRI payments under RCW 28A.400.200(4), it follows *a fortiori* that WSSB employees must also receive TRI salary.

Other Washington statutes also make clear that the legislature will explicitly modify the term "salary" if the legislature does not intend to mean the full amount an individual is paid. For example, RCW 41.04.510 states that "'Base monthly salary' for the purposes of this section means the amount earned by the employee before any voluntary or involuntary

payroll deductions, and not including overtime pay." *See* also RCW 41.54.010, which provides that "'Base salary' . . . includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, non-money maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment." If, as WSSB urged and the trial court held the legislature intended "salary" in RCW 72.40.028 to refer to something less than its plain language definition, the legislature would have stated this specifically by modifying the term "salary." It did not and therefore, this court must apply the plain meaning of this statutory term.

Moreover, nothing in the TRI statute removes TRI payments from the definition of salary. Specifically, RCW 28A.400.200(4) provides:

"Salaries and benefits for certificated instructional staff may exceed the limitations in subsection (3) of this section only by separate contract for additional time, additional responsibilities, or incentives. Supplemental contracts shall not cause the state to incur any present or future funding obligation. Supplemental contracts shall be subject to the collective bargaining provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240, shall not exceed one year, and if not renewed shall not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.380. No district may enter into a supplemental contract

under this subsection for the provision of services which are a part of the basic education program required by Article IX, section 3 of the state Constitution."

Clearly, the monies paid to VSD teachers under the TRI statute are salary by any generally accepted meaning of that term. Therefore, the plain meaning of these statutes is that WSSB teachers shall receive salary equivalent to VSD teachers, including TRI payment.

C. Context also requires that WSSB teachers receive equivalent salary to VSD teachers

The plain language, history, and context of these statutes all require the conclusion that the legislature did not intend to exempt WSSB employees from TRI salary in creating RCW 28A.400.200(4). "If a statute is ambiguous, the Washington Supreme Court will resort to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it. The supreme court must construe an ambiguous statute to effectuate the intent of the legislature. In construing an ambiguous statute, courts may not read into it matters that are not in it and may not create legislation under the guise of interpreting a statute." Watson, 146 Wn.2d 947 at 955. Washington School for the Blind's interpretation requires the court to effectively create legislation which carves out a WSSB employee ineligibility clause into RCW 28A.400.200(4). As noted above, the plain

language of the statutes strongly indicates the legislature's intent to provide WSSB employees the same monetary payment as VSD employees. However, there are also numerous examples of evidence, not limited to the statutes' plain language, indicating legislature's intent to provide TRI salary to WSSB employees, and rebutting Washington School for the Blind's contextual evidence to exempt Delyria and Koch from TRI salary.

a. Legislative Context and History

RCW 72.40.110, which provides that WSSB "employees' hours of labor shall follow all state merit rules as they pertain to various work classifications and current collective bargaining agreements," supports the payment of TRI salary to Delyria and Koch. RCW 72.40.110 supports the payment of TRI salary to Delyria and Koch insofar as it incorporates the WSSB employees' collective bargaining agreement, which itself substantively incorporates RCW 72.40.028 (former RCW 72.05.140, reenacted as RCW 72.40.028) in administering WSSB employees' salary. *See* CP 41. As shown above, RCW 72.40.028 (formerly RCW 72.05.140) provides that WSSB employees of like background and experience shall receive salary equal to VSD employees. RCW 72.40.110 certainly does

nothing to suggest that any subsection of RCW 28A.400.200 should not apply to WSSB employees by operation of RCW 72.40.028.

b. Policy

Withholding TRI salary to WSSB employees runs counter to the purpose and language of RCW 28A.310.010(3), which provides that educational service districts shall be established and provide services to WSSB "to assure equal educational opportunities." It is self-evident that exempting WSSB employees from TRI salary will have a negative impact on the quality of education, by discouraging the most qualified teachers from applying and continuing to work at WSSB, as well as by lowering morale among present employees. Delyria and Koch's loss of income due to Washington School for the Blind's nonpayment of TRI salary is significant (approximately \$18,976 per teacher over the past 7 years of nonpayment). *See* CP 38. It cannot be seriously doubted that this inequity will undermine the legislative intent expressed in RCW 28A.310.010(3) to assure "equal educational opportunities" for WSSB students. Furthermore, withholding TRI salary to WSSB employees runs counter to the implied purpose of RCW 72.40.028 (to allow WSSB to recruit and retain qualified employees necessary to fulfill the school's mission).

Continuing to withhold TRI salary from WSSB employees will also have a negative impact on WSSB's ability to recruit and retain the most qualified teachers and damage WSSB's ability to fulfill its mission, contrary to the legislative intent of RCW 72.40.028. WSSB's website promises it will "Provide World-Class Educational Services to the Blind and Visually Impaired both on Campus and Throughout Our State." Washington State School for the Blind, Strategic Plan. *See* CP 55. However, from 1997-2001, WSSB saw close to as many employees leave the school (24) as were currently employed as of November, 2001 (32). *See* CP 36. It cannot be disputed that raising WSSB employees' salary to the level enjoyed by VSD employees will assist WSSB in attracting and retaining more qualified staff, which will result in less employee turnover, and better success in fulfilling its promise and educational mission to the state. Certainly, WSSB suffers as the morale of their staff is damaged by Washington School for the Blind's refusal to provide the same salary as other public school teachers within the same district.

- c. Fairness and equity requires payment of TRI to WSSB employees

Delyria and Koch and all WSSB employees perform significant extra work greater than or equal to the amount performed by VSD

employees. The legislative requirement of fairness, reflected in the pay parity statute itself, mandates that WSSB teachers receive an equivalent TRI salary. Some of the extra tasks, which are performed by Delyria and Koch as WSSB employees, and which extend beyond the work performed by most VSD employees, include the following:

- Significantly greater amount of consultation and communication (via letter, phone, and meeting at sports and social events) with parents on educational programming and social/emotional development.
- Significantly greater amount of time writing and reviewing documentation of students' progress, including Individual Education Plans (IEP), Functional Vocational Evaluations (FVE), and Aversive Therapies.
- Develop and implement of IEP goals, adopt materials of instruction, plan units of instruction in consideration of each student's individual needs, and develop instructional activities.
- Service on community organizations of concern to the blindness community.
- Significant amount of unpaid and non-exchangeable time preparing curriculum and facilities for the school year.

See CP 48 - 53 for an in-depth discussion of TRI duties and responsibilities assumed by Delyria and Koch and WSSB employees generally. *See* CP 38, for an itemization of the discrepancy between the salary received by Delyria and Koch, and the salary which Delyria and

Koch would have received if they were employed by VSD. The legislature adopted RCW 72.40.028 and RCW 28A.400.200 understanding the significant challenges faced by teachers at WSSB. WSSB's website likewise recognizes the individualized attention which its teachers are required to give students: "The total educational program at WSSB is designed to facilitate the particular learning characteristics of the students enrolled." Washington State School for the Blind, Strategic Plan. *See* CP 54 - 57. The sound public policy of providing adequate compensation mirroring the salary of other public school teachers in the same district in order to recruit and retain qualified teachers, and simple notions of equity and fairness, certainly motivated both statutes' enactment.

D. TRI Payments Are Salary under RCW 28A.400.200

The trial court held that TRI payments are not salary. However, this holding is contradicted by WSSB's own personnel policies as well as the statutory language. Washington School for the Blind's self-published S-275 Personnel Reporting Handbook defines as salary supplemental contracts for time, responsibility, and incentives. *See* CP 39. Washington School for the Blind's attempt to distinguish TRI salary as somehow different and exempt from the salary described in RCW 72.40.028 is

especially tenuous where Washington School for the Blind's own Personnel Reporting Handbook requires that TRI contracts are reported as salary.

In addition, the plain language of the statute indicates that TRI payments are salary. RCW 28A.400.200 concerns salaries for school district employees throughout the state. RCW 28A.400.200(2) sets forth the minimum salary for certified instructional staff, and 28A.400.200(3) sets forth the maximum average salary for certified instructional staff. 28A.400.200(4) then describes the TRI salary available to certified instructional staff as follows:

Sec. 28A.400.200(4). Salaries and benefits for certificated instructional staff may exceed the limitations in subsection (3) of this section only by separate contract for additional time, additional responsibilities, or incentives. Supplemental contracts shall not cause the state to incur any present or future funding obligation. Supplemental contracts shall be subject to the collective bargaining provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240, shall not exceed one year, and if not renewed shall not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.300. No district may enter into a supplemental contract under this subsection for the provision of services which are a part of the basic education program required by Article IX, section 3 of the state Constitution.

As indicated by the text in bold, by its own terms the text of 28A.400.200(4) indicates that the separate TRI contracts are salaried

compensation. The only way salary may exceed the limits in 28A.400.200(3) by virtue of 28A.400.200(4) is if the TRI contracts are in fact salaried compensation. If the TRI contracts are not salary, the language "Salaries and benefits" at the beginning of the first sentence in 28A.400.200(4) would be superfluous. "A statute should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant." City of Kent v. Beigh, 145 Wn.2d 33, 39, 32 P.3d 258 (2001). Not only is it possible to construe 28A.400.200(4) so that "Salaries and benefits" has meaning, the only reasonable interpretation of the plain language of the statute is that TRI contracts are salaried compensation.

E. The Limitation on the State's Liability for TRI Payments By School Districts Does Not Apply

The text of 28A.400.200(4) offers no basis for reasonably concluding that TRI salary should be unavailable to WSSB employees, in denigration of Delyria and Koch's affirmatively granted right to equal salary under RCW 72.40.028. The language declaring that the state shall incur no funding obligation does not reasonably lead to the conclusion WSSB employees should be ineligible to receive TRI salary. The Washington state biennial budget is not the sole funding source for WSSB.

CP 293. WSSB receives funding from the federal government as well as grants and private gifts -- all of which could fund TRI salary. Indeed, Washington state block grants formerly funded a portion of VSD employees' TRI salary. *See* CP 35. Therefore, in light of these other available sources of funding for TRI salary, the statement disclaiming a state funding obligation does not reasonably allow the conclusion that WSSB employees' statutorily granted right under RCW 72.40.028 to receive salary equal to VSD employees is diminished. Only plain and direct language stating the ineligibility of WSSB employees to receive TRI salary can diminish WSSB employees' statutorily granted right to receive salary equal to VSD employees.

The plain language of RCW 28A.400.200 indicates that the legislature only intended to exempt the state from a funding obligation for TRI salary to school district employees only; the plain language does not suggest legislative intent to exempt the state from an obligation to pay WSSB employees an equivalent to TRI salary. "To determine legislative intent, courts look first to the language of the statute." *Watson*, 146 Wn.2d 947 at 954. RCW 72.40.048 tied WSSB employees' compensation rights to the salaries of employees in VSD -- and this was well understood by the

legislature when drafting RCW 28A.400.200. However, the legislature drafted RCW 28A.400.200 focusing solely on the school district -- note RCW 28A.400.200(1): "Every school district board of directors shall fix, alter, allow, and order paid salaries and compensation for all school district employees in conformance with this section." Nevertheless, it is absurd to conclude that the legislature did not intend to provide WSSB employees with any of the terms of RCW 28A.400.200 simply because WSSB is not mentioned with particularity in RCW 28A.400.200. In fact, it is not disputed that operation of RCW 72.40.048 gave WSSB employees rights identical to VSD employees with regard to RCW 28A.400.200(2) (giving WSSB employees a right identical to VSD employees to a minimum salary), and RCW 28A.400.200(3) (providing inter alia limitations on WSSB and VSD employees as to maximum salary).

The language in RCW 28A.400.200(4) which Washington School for the Blind argued below was evidence of a legislative intent to provide TRI salary to school district employees only, must therefore be read in conjunction with the language in RCW 28A.400.200(1), which states that the entire section concerns the operation of school districts.

Understanding that the legislature was writing about the operation of

school districts, it is unreasonable to conclude that the legislature would intend to make state WSSB employees ineligible for TRI salary in RCW 28A.400.200(4) by the operation of a funding disclaimer compelling school districts to fund their own employees' TRI salary.

Instead, the only reasonable interpretation of the legislative intent (as reflected by the plain language) behind the funding obligation disclaimer in RCW 28A.400.200(4) is that the state will not incur any funding obligation to the school districts only. The legislature reasonably intended to apply this disclaimer to school districts and not WSSB, because it was understood that school districts could negotiate funds to support employees' TRI salary at the local level due to their local levy authority and geographically limited tax base. Therefore, the reasonable plain language interpretation of the legislative intent behind the funding disclaimer is that it was believed that the state would have an obligation to fund TRI salary to WSSB employees in an amount matching the TRI salary negotiated by VSD employees. If, as urged by Washington School for the Blind, the legislature had intended to diminish WSSB employees' statutory rights under RCW 72.40.028 (by reducing the amount of their salary relative to VSD), the legislature would have stated this in plain

language in RCW 28A.400.200(4), or amended RCW 72.40.028, or both. The absence of any language exempting WSSB employees from receiving an equivalent to TRI salary indicates that the legislature intended RCW 72.40.028 to be expressly followed, not diminished by a fiscal technicality intended only to apply to the operation of school districts.

Well-accepted rules of statutory interpretation support Delyria and Koch's approach. Under Washington School for the Blind's interpretation, Delyria and Koch's right to a salary identical to VSD employees under RCW 72.40.028 is significantly undermined. "The purpose of statutory construction is to harmonize the law and save apparently conflicting statutes from ineffectiveness." *See Musselman Hub Brake Co. v. Commissioner of Internal Revenue*, 139 F.2d 65, 67 (6th Cir. 1943) (citing *Burnet v. Guggenheim*, 288 U.S. 280, 286, 53 S. Ct. 369, 77 L. Ed. 748 (1933)). *See also In re White*, 1 Cal.3d 207, 212, 460 P.2d 980 (1969) ("Courts are bound, if possible, to maintain integrity of two potentially conflicting statutes if the two may stand together"). If the Washington School for the Blind's interpretation of RCW 28A.400.200(4) is adopted, WSSB employees would be stripped of their statutorily-granted right to receive salary equal to employees at VSD, and the legislature's

clear language in RCW 72.40.028 providing for equal salary to WSSB and VSD employees (of similar background and experience) would be rendered ineffective.

In order for provisions of RCW Title 28A to apply to WSSB, it is not necessary for WSSB to be mentioned with particularity within RCW Title 28A. As noted, supra, it is undisputed that RCW 28A.400.200 subparts (2) and (3) apply to WSSB employees by operation of RCW 72.40.028. The absence of a statute analogous to RCW 72.40.028 (linking WSSB with VSD with regard to salaries) compelled the legislature to mention WSSB with particularity in RCW 28A.655.130. In RCW 28A.655.130, which created Learning Improvement Days and specifically authorized WSSB to receive funding for that purpose, the legislature correctly determined that it would be necessary to mention WSSB with particularity, because no prior statute linked WSSB apportions to district school apportions. The legislature understood in drafting RCW 28A.400.200 that WSSB employees' salaries would be tied to VSD employees' salaries by operation of RCW 72.40.028. Therefore, no statute in RCW Title 28A indicates that it is necessary to mention WSSB

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particularity in order to demonstrate legislative intent to apply provisions in RCW Title 28A to WSSB.

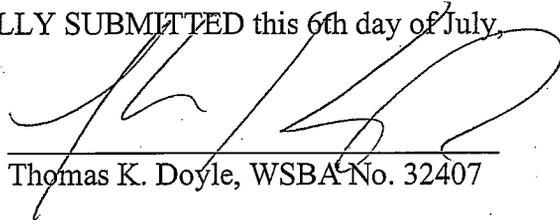
5. CONCLUSION

The plain language of RCW 28A.400.200(4) (providing for TRI salary for school district employees) and RCW 72.40.028 (providing for WSSB employees to receive salary equal to VSD employees) require that Delyria and Koch receive an equivalent to VSD TRI salary. No language in RCW 28A.400.200(4) allows the reasonable interpretation that the legislature intended to diminish WSSB employees' right under RCW 72.40.028 to salary equal to the amount received by VSD employees. The plain language of RCW 28A.400.200 requires the conclusion that the legislature intended to apply all of its provisions to school districts only, and to maintain WSSB employees' right to salary equal to VSD employees by operation of RCW 72.40.028. The trial court's interpretation adds and subtracts terms to those selected by the legislature, which is impermissible absent a showing that such terms are affirmatively required to rationalize the statutes. Even if extrinsic evidence is considered, the evidence supporting legislative intent to provide equal salaried compensation to WSSB employees is determinative. For the reasons set forth above, the

Court should reverse the trial court's decision and remand this matter with the direction that the court grant Plaintiffs' Motion for Partial Summary Judgment.

2005: RESPECTFULLY SUBMITTED this 6th day of July,

By:



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CERTIFICATE OF SERVICE

STATE OF WASHINGTON

BY 

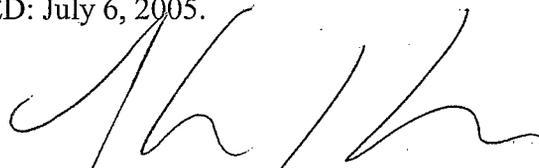
I hereby certify that I served the foregoing OPENING BRIEF upon
the following person at the following address:

W. Howard Fischer
Senior Assistant Attorney General
1125 Washington St. S.E.
P.O. Box 40100
Olympia, WA 98504-0100

Attorneys for Appellees

- X by mailing the original in a sealed, first-class postage-paid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by hand delivering a copy thereof to the attorney(s) listed above, on the date set forth below.
- by sending via overnight courier a copy thereof in a sealed, postage-paid envelope, addressed to the attorney(s) listed above, on the date set forth below.
- by faxing a copy thereof to the attorney(s) at the fax number(s) shown above, on the date set forth below.

DATED: July 6, 2005.



Thomas K. Doyle, OSB 97251
Of Attorneys for Appellants