

SET 9/9/08  
82744-3

FILED  
COURT OF APPEALS  
DIVISION II

08 AUG 14 PM 12: 27

No. 36804-8-II

STATE OF WASHINGTON

IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

BY [Signature]  
DEPUTY

STATE OF WASHINGTON,  
Respondent,

v.

MATTHEW HIRSCHFELDER,  
Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

RESPONDENT'S BRIEF IN RESPONSE TO  
WASHINGTON EDUCATION ASSOCIATION'S  
AMICUS CURIAE BRIEF

H. STEWARD MENEFEE  
Prosecuting Attorney  
for Grays Harbor County

BY: [Signature]  
MEGAN M. VALENTINE  
Deputy Prosecuting Attorney

OFFICE ADDRESS:  
Grays Harbor County Courthouse  
102 West Broadway, Room 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951  
WSBA #35570

pm 8/13/08

---

**TABLE**

**Table of Contents**

IDENTITY OF NON-MOVING PARTY ..... 1

DECISIONS OF COURTS BELOW ..... 1

ISSUE PRESENTED FOR REVIEW ..... 1

RESPONDENT’S COUNTER STATEMENT OF THE CASE ..... 1

ARGUMENT WHY TRIAL COURT SHOULD BE AFFIRMED ..... 3

    1. THE STATUTE IS NOT IN CONFLICT. ....

        A. RCW 9.44.093(b) is not ambiguous and therefore the title  
           should not be considered in interpreting the statute ..... 3

        B. The word “minor” in the title of RCW 9.44.093 does not  
           limit the victim to a person under 18 .....

        C. The Legislature intended RCW 9.44.093(b) to apply to  
           consensual sexual intercourse between a school district  
           employee and an eighteen year old registered student  
           of the district ..... 11

    2. THE RULE OF LENIENCY DOES NOT REQUIRE THE  
       STATUTE BE INTERPRETED IN FAVOR OF THE  
       ACCUSED BECAUSE THERE IS NOT A CONFLICT  
       IN THE STATUTE .....

    3. THE STATUTE IS NOT VAGUE .....

CONCLUSION ..... 23

## TABLE OF AUTHORITIES

### Table of Cases

<u>State v. Armendariz</u> , 160 Wash.2d 106, 156 P.3d 201 (2007) . . . . .	10, 11
<u>State v. Roggenkamp</u> , 153 Wash.2d 614, 106 P.3d 196 (2005) . . . . .	10
<u>State v. Bradshaw</u> , 152 Wash.2d 528, 98 P.3d 1190 (2004) . . . . .	10
<u>State v. Brown</u> , 140 Wash.2d 456, 998 P.2d 321 (2000) . . . . .	4
<u>Equipto Division v. Yarmouth</u> , 134 Wash.2d, 356, 950 P.2d 451 (1998) . . . . .	4
<u>State v. Riles</u> , 135 Wash.2d 326, 957 P.2d 655 (1998) . . . . .	8
<u>City of Seattle v. Montana</u> , 129 Wash.2d 583, 919 P.2d 1218 (1996) . . .	9
<u>State v. Myles</u> , 127 Wash.2d 807, 903 P.2d 979 (1995) . . . . .	9
<u>State v. McGee</u> , 122 Wash.2d 783, 864 P.2d 912 (1993) . . . . .	8
<u>State v. Aver</u> , 109 Wash.2d 303, 746 P.2d 479 (1987) . . . . .	9, 10
<u>State v. Stevenson</u> , 128 Wash.App. 179, 114 P.3d 699 (2005) . . . . .	9
<u>State v. Pollard</u> , 80 Wash.App. 60, 906 P.2d 976 (1995), review denied 129 Wash.2d 1011, 917 P.2d 130 . . . . .	8
<u>State v. Dyson</u> , 74 Wash.App. 237, 872 P.2d 1115 (1994), review denied 125 Wash.2d 1005, 886 P.2d 1133 . . . . .	8, 9
<u>State v. Russell</u> , 69 Wash.App. 237, 848 P.2d 743 (1993), review denied 122 Wash.2d 1003, 859 P.2d 603. . . . .	9

**STATUTES**

U.S.C.A. Cost. Amend. 14 .....	8
RCWA Cost. Art. 1 §§3 .....	8
RCW 1.08.015(3) .....	4
RCW 9A.44.093 .....	4-6
RCW 26.28.010 .....	5
RCW 26.28.015 .....	6
RCW 71.06.010 .....	6
WAC 1-21-080(3) .....	4

**OTHER**

SSB 5309 .....	5
Black's Law Dictionary (7 <sup>th</sup> ed. 1999) .....	11, 12
Washington Laws 1988 Ch. 145 §9 .....	7
January 29, 2001, 10:00, archives, House Criminal Justice / Corrections Committee Hearing, <a href="http://www.tvw.org">www.tvw.org</a> (Accessed August 13, 2008) .....	7, 8

**A. IDENTITY OF NON-MOVING PARTY**

Respondent, the State of Washington, by and through Megan M. Valentine, Grays Harbor County Deputy Prosecuting Attorney, asks this court to affirm the rulings of the court below.

**B. DECISIONS OF COURTS BELOW**

Petitioner asks this court to deny the decision of the Grays Harbor County Superior Court in cause no. 07-1-294-7 denying the Defendant's Motion to Dismiss under *Knapstad*, and finding the underlying statute, RCW 9A.44.093 constitutional.

**C. ISSUE PRESENTED FOR REVIEW**

Is the statute's title in conflict with the body of the statute?

Is the Statute vague?

**D. RESPONDENT'S COUNTER STATEMENT OF THE CASE**

Matthew Hirschfelder was charged by Information filed in Grays Harbor Superior Court on May 18, 2007 with one count of Sexual Misconduct with a Minor in the First Degree under RCW 9.44.093(1)(b),

this matter was previously filed as a preliminary hearing in Grays Harbor District Court on April 19, 2007.

The State alleges that at the time of the incident Hirschfelder was employed by the Hoquiam School District as a Choir Teacher. A.N.T. was a student at Hoquiam High School, where Hirschfelder taught, and a member of the choir. Hirschfelder was more than 60 months older than A.N.T. On the night of the book signing, held at Hoquiam High School, Hirschfelder had sexual intercourse with A.N.T. A.N.T. was 18 at the time. The book signing was held a short time before A.N.T.'s graduation from Hoquiam High School.

Hirschfelder filed a Motion to Dismiss under *Knapstad* on July 13, 2007. Hirschfelder filed his supporting brief to the Motion to Dismiss for unconstitutionality of the statute on August 1, 2007. The State filed its response to the Motion to Dismiss on August 14, 2007. Oral argument was heard by the court on August 24, 2007. On September 4, 2007, the court issued an oral ruling denying the Motion to Dismiss under *Knapstad* and for unconstitutionality of the statute. At that hearing the court entered a written order certifying the issue for review and granted a continuance of the trial set for September 25, 2007. On September 28, 2007 Hirschfelder filed a Notice and supporting Brief and Motion for Discretionary Review

with this Court. This court accepted review in a written order filed November 19, 2007.

**E. ARGUMENT WHY LOWER COURT SHOULD BE AFFIRMED**

This Court should affirm the decision of the trial court below because the court correctly interpreted the statute as criminalizing sexual intercourse between an adult employee of the school district and a registered student of the school district, even if that student is 18, and affirm the finding of the court below that the statute is not unconstitutionally vague.

**1. THE STATUTE IS NOT IN CONFLICT**

The Washington Education Association (hereinafter WEA)'s Amicus Curiae Brief first argues that RCW 9A.44.093(b) is susceptible to two or more interpretations because the title of RCW 9A.44.093 is "Sexual misconduct with a minor in the first degree" but RCW 9A.44.093(b) identifies the victim as "a registered student of the school who is at least sixteen years old and not married to the employee".

**A. RCW 9.44.093(b) is not ambiguous and therefore the title should not be considered in interpreting the statute.**

“The primary objective of statutory interpretation is to give force to the language of a statute and carry out the intent of the Legislature”.<sup>1</sup> The court must give meaning to every part of the statute, however, the court should not strain in its interpretation to inject requirements not set forth by the legislature.<sup>2</sup> The title does not control the meaning of the statute.<sup>3</sup>

RCW section titles are not changed with each amendment. The titles of codes, chapters, and sections of the Revised Code of Washington are prepared by the Office of the Code Reviser pursuant to RCW 1.08.015(3). Unlike RCWs the titles to sections of the Washington Administrative Code (WAC) are selected by the agencies.<sup>4</sup> The bill amending this statute, as is common, contained a title which was not

---

<sup>1</sup> *State v. Brown*, 140 Wash.2d 456, 469; 998 P.2d 321 (2000).

<sup>2</sup> *Supra*. (holding that knowledge that the victim is a law enforcement officer in the performance of official duties at the time of an assault is not an implied element of the crime of assault in the third degree even though the legislature has made it an element in other statutes relating to crimes against law enforcement officers).

<sup>3</sup> *Equipto Div. Aurora Equipment Co. v. Yarmouth*, 134 Wash.2d 356, 950 P.3d 451 (1998).

<sup>4</sup> WAC1-21-080(3) “The agency shall place a short caption on each section to describe its contents.”

specific as to this particular statute except to reference the RCW being amended.<sup>5</sup> Therefore the RCW section title, which was assigned by the Code Revisors office clerical staff at the time the statute was originally created, was not changed when the statute was amended. The amendment which broadened the statute to encompass all registered students (not just those under eighteen) should not be restricted by the Code Revisor's office's previously assigned title to the statute.

**B. The word "minor" in the title of RCW 9.44.093 does not limit the victim to a person under 18.**

As stated in the brief of the Washington State Education Association, the issue in this case is how to interpret the statute at issue. The second interpretation is correct, not because it ignores the use of the word "minor" in the title and repeated in the title in the body, but because it contains a definition of a victim who may be a minor even though the victim may be eighteen or even older. This does not conflict with RCW 26.28.010.

WEA argues that the "Age of majority for enumerated specific purposes" applies to the present situation and statute under subsection (5). This is not true because subsection (5) allows a person who is eighteen

---

<sup>5</sup>

SSB 5309.

years old “[t]o make decisions in regard to their own body”. But RCW 9A.44.093(b) is not limited to situations in which the sexual intercourse is consensual. Consent is not an element of the offense and whether or not the victim wishes to engage in the sexual intercourse is immaterial. RCW 9A.44.093(b) does not restrict or regulate the ability of registered students (under or over the age of eighteen) to make decisions in regard to their own body. RCW 9A.44.093(b) regulates and restricts only the employee of the school district. Therefore the victim in RCW 9A.44.093(b) does not fall within the enumerated specific purposes of RCW 26.28.015 and therefore the age restriction within that statute does not apply and there is no conflict between these two statutes.

It is true that a minor is defined as someone under the age of eighteen, as cited by WEA, under RCW 71.06.010 as it applies to Sexual psychopaths. However, this is not the chapter under which RCW 9A.44.093 is found and the WEA has provided no reason this definition of “minor” must apply to RCW 9A.44.093.

**C. The Legislature intended RCW 9.44.093(b) to apply to consensual sexual intercourse between a school district employee and an eighteen year old registered student of the district.**

RCW 9A.44.093 prior to the 2005 amendment read as follows:

(1) a person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.<sup>6</sup>

When the legislature introduced HB 1091, the House Criminal Justice / Corrections Committee described the amendments as “very black and white”.<sup>7</sup> The statute’s language was seen as “clear language . . . if you are a school employee, while you are at school, you don’t have sex with the students”.<sup>8</sup> The committee also commented “Inside the school setting, all we’re going to have to show is that school employee, registered

---

<sup>6</sup> Washington Laws, 1988 ch. 145 §9.

<sup>7</sup> Transcript of House Criminal Justice / Corrections Hearing held January 29, 2001, Appendix A.

<sup>8</sup> Appendix A, Second Female Speaker.

student, sexual intercourse”<sup>9</sup> The behavior between Hirschfelder and A.N.T. was exactly the conduct the legislature intended to prohibit.

**2. THE RULE OF LENIENCY DOES NOT REQUIRE THE STATUTE IN FAVOR OF THE ACCUSED BECAUSE THERE IS NOT A CONFLICT IN THE STATUTE.**

The rule of lenity only applies if a statute is ambiguous and that ambiguity is not able to be resolved by the legislative history.<sup>10</sup> Because there is no ambiguity in the statute, there is no need to refer to the legislative history. Even if the legislative history is continued, the statute was clearly amended to remove the eighteen year old age limit (restricting that only to section a) of RCW 9A.44.093 and require the victim under section b) only be a registered student.

**3. THE STATUTE IS NOT VAGUE.**

The due process vagueness doctrine under the Federal and State Constitutions serves two purposes: (1) to ensure the statute provides the public with adequate notice of what conduct is prohibited, and (2) to protect the public from arbitrary or discriminatory law enforcement.<sup>11</sup>

---

<sup>9</sup> Appendix A, Male Speaker, Paragraph 1.

<sup>10</sup> *State v. McGee*, 122 Wash.2d 783, 787, 864 P.2d 912 (1993).

<sup>11</sup> U.S.C.A. Const. Amend. 14; RCWA Const. Art. 1, §§ 3; *State v. Riles*, 135 Wash.2d 326, 957 P.2d 655 (1998); *State v. Pollard*, 80 Wash.App. 60, 906 P.2d

Defense challenges the first of these two purposes, Hirschfelder's statement of additional grounds for review challenges the second.

In evaluating whether the statute provides adequate notice of what conduct is prohibited, the court should examine the context of the entire enactment and give the language a sensible, meaningful and practical interpretation. A statute is presumed constitutional "unless its unconstitutionality appears beyond a reasonable doubt."<sup>12</sup> Some imprecisions or uncertainty are constitutionally permissible and absolute specificity is not required.<sup>13</sup> The statute is to be viewed as a whole and in the context of the entire enactment, to determine if it has the required degree of specificity.<sup>14</sup> The court should inspect the actual conduct of the party not examine hypothetical situations when considering a vagueness

---

976 (1995), review denied 129 Wash.2d 1011, 917 P.2d 130; *State v. Dyson*, 74 Wash.App. 237, 872 P.2d 1115 (1994), review denied 125 Wash.2d 1005, 886 P.2d 1133.

<sup>12</sup> *State v. Aver*, 109 Wash.2d 303, 746 P.2d 479 (1987).

<sup>13</sup> *State v. Stevenson*, 128 Wash.App. 179, 114 P.3d 699 (2005); *State v. Dyson*, 74 Wash.App. 237, 872 P.2d 1115 (1994), review denied 125 Wash.2d 1005, 886 P.2d 1133; *State v. Russell* 69 Wash.App. 237, 848 P.2d 743 (1993), review denied 122 Wash.2d 1003, 859 P.2d 603.

<sup>14</sup> *State v. Myles*, 127 Wash.2d 807, 903 P.2d 979 (1995).

challenge.<sup>15</sup>

If the legislature uses a phrase or term in one portion of a statute, but excludes it from another, the courts should not imply an intent to include the missing term in that part where the term or phrase is excluded.<sup>16</sup> Only if a statute is ambiguous, meaning it is susceptible to more than one interpretation, may courts resort to extrinsic aids to determine legislative intent, such as legislative history.<sup>17</sup> The court should not strain to inject doubt into the meaning of the statute but should give all portions of the statute meaning.<sup>18</sup>

The statute is presumed Constitutional unless vague beyond a reasonable doubt.<sup>19</sup> The statute uses “minor” in three different ways in the same subsection and therefore does not contain one independent definition of “minor”. According to this subsection, a minor can be a) a person 16-

---

<sup>15</sup> *State v. Stevenson*, 128 Wash.App. 179, 114 P.3d 699 (2005), *City of Seattle v. Montana*, 129 Wash.2d 583, 919 P.2d 1218 (1996).

<sup>16</sup> *State v. Bradshaw*, 152 Wash.2d 528, 98 P.3d 1190 (2004).

<sup>17</sup> *State v. Armendariz*, 160 Wash.2d 106, 156 P.3d 201 (2007).

<sup>18</sup> *Aver*, 109 Wash.2d at 308; *see also State v. Roggenkamp*, 153 Wash.2d 614, 625, 106 P.3d 196 (2005).

<sup>19</sup> *Aver*, 109 Wash.2d at 308.

17 years old; b) a registered student at a specific type of school; or c) a foster child. The legislature chose different language for each prong because the situations are different. Therefore, the policies behind each is different. This Court should not read this statute so as to render the legislature's use of different language meaningless. The legislature intended the different prongs to apply in different situations and those situations involve victims within different age groups.

RCW 9A.44.093(b) is definite and specific. The fact that the legislature placed an age limit on the victim in section (a) should not be implied as a legislative oversight in section (b). The statute should be given its plain meaning as enacted.<sup>20</sup> That the term "at least sixteen years old" would include someone who is eighteen is a reasonable interpretation.

Black's Law Dictionary defines "minor" as "A person who has not reached full legal age; a child or juvenile. – Also termed *infant*".<sup>21</sup> A "child" is defined as "1. At common law, a person who has not reached the age of 14, though the age now varies from jurisdiction to jurisdiction."<sup>22</sup>

---

<sup>20</sup> *Armendariz*, 160 Wash.2d at 110.

<sup>21</sup> Black's Law Dictionary 1101 (7<sup>th</sup> ed. 1999).

<sup>22</sup> *Supra* at 232.

A “juvenile” is defined as “A person who has not reached the age (usu. 18) at which one should be treated as an adult by the criminal justice system; MINOR”.<sup>23</sup> An “infant” is defined as “1. A newborn baby. 2. MINOR”.<sup>24</sup> “legal age” is defined as the age of capacity.<sup>25</sup> Under “Age”, Black’s Law Dictionary contains the following definitions:

*age of capacity.* The age, usu. defined by statute as 18 years, at which a person is legally capable of agreeing to a contract, executing a will, maintaining a lawsuit, or the like. – Also termed *age of majority; legal age; lawful age*. See CAPACITY.

*age of majority.* 1. The age, usu. Defined by statute as 18 years, at which a person attains full legal rights, esp. civil and political rights such as the right to vote. – Also termed *lawful age*. 2. See *age of capacity*.<sup>26</sup>

“Capacity” is defined in pertinent part as “2. A legal qualification, such as legal age, that determines one’s ability to sue or to be sued, to enter into a binding contract, and the like”.<sup>27</sup> Thus, the plain and ordinary meaning of “minor” is not a person is under 18.

---

<sup>23</sup> Supra at 871.

<sup>24</sup> Supra at 781.

<sup>25</sup> Supra at 903.

<sup>26</sup> Supra at 62.

<sup>27</sup> Supra at 199.

The age of a minor commonly depends upon the context. For example, Black's Law Dictionary defines the "age of consent" as. The age, usu. defined by statute as 16 years, at which a person is legally capable of agreeing to marriage (without parental consent) or to sexual intercourse. See CONSENT. In this context the "minor" if controlling is a "registered student", not only someone under eighteen. Appellant and WEA have not shown the statute to be unconstitutionally vague beyond a reasonable doubt and the Court should therefore affirm the ruling of the court below.

**F. CONCLUSION**

For the reasons set forth above, the State respectfully requests the court affirm the decisions of the court below and remand this matter for further proceedings.

DATED this 13<sup>th</sup> day of August, 2008.

Respectfully Submitted,

By: M. M. Valentine  
MEGAN M. VALENTINE  
Deputy Prosecuting Attorney  
WSBA #35570

Male Speaker: This focuses entirely on the school setting, um, we actually have a, us, a slightly different draft of it I think is clearer. It would just break out the current law as a subsection (a). New subsection (b) and all it would read was, the person is a school employee, which is defined, and has, and has, or causes another person to have sexual intercourse with a registered student, which is a term that the school districts will understand, uh, and that person, and the student is not married to the employee. In the odd case you've got some weird situation we throw that in there. So, I think pretty straight forward, do the same language for both first and second degree, um, and we support this bill. I don't think it's controversial particularly, um it is, it will be an added protection to the school setting. Uh, it would be less of a burden then outside the school setting will still have to show there was a significant relationship and there was some abuse of that relationship. Inside the school setting, all we're going to have to show is that school employee, registered student, sexual intercourse, sexual contact. So, um, if there's any questions, I think I'll pass the podium.

Yeah, I just discussed it and I have the amendment here but I read to you exactly what it said. It would just require a school employee as defined under statute and require the other person to be a registered student.  
Questions from the Panel?

Female Speaker: Now does this do it? I mean is there going to be another situation that may come up that's not covered?

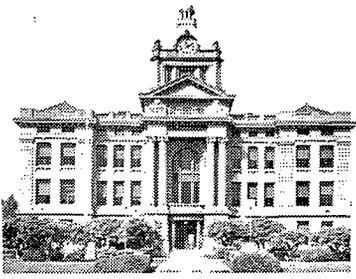
Second Female Speaker: Outside the school setting anything can happen, but this would just be in school settings. Um, I think that this is pretty clear language that if you are a school employee, while you are at school, you don't have sex with the students. I think this is very black and white. [Unintelligible] what we did, um a couple of years ago with inmates and wardens [unintelligible].

Female Speaker: Okay, Thank you.

Susan Brown: Good Morning, [unintelligible] and Bryan, um, My name is Susan Brown, I'm with the Washington Coalition of Sexual Assault Programs and, we just want to stand up and support of this bill [unintelligible] well it recognizes the very unique relationship and a very uniquely, um, potentially coercive relationship between those that work in school settings and students that are there. Even if there isn't an implicit threat there is certainly a differential of power that needs to be recognized, um, I

think it's very much a closed institution in many ways where schools, and those who work for them, um, kind of create a very different relationship between students and those that, um, they are accountable to. And it also sort of is reflective of the trust that we put in those who um take care of our children and instruct them. Um, especially for those who are going all the way through high school. So, um, from those of us who work with the, um, victim's community and those of us who, um, talk to these kids who are having relationships with teachers or other staff, this is an incredibly important piece of legislation that will, um, recognize a lot of the concerns in that setting.

Male Speaker: Thank you. Any questions from the panel? Thank you.



H. STEWARD MENEFEE  
Grays Harbor County Prosecuting Attorney  
102 W. Broadway, Room 102  
Montesano, Washington 98563  
360-249-3951  
SCAN 234-5231  
FAX 360-249-6064

CHIEF CRIMINAL DEPUTY  
Gerald R. Fuller  
OFFICE ADMINISTRATOR  
Randi Toyra  
SENIOR DEPUTIES  
Jennifer L. Wieland  
Rebecca L. Bernard  
James G. Baker  
William A. Leraas  
DEPUTIES  
Kraig C. Newman  
Katherine L. Svoboda  
Megan M. Valentine  
Gordon Wright  
Edgar M. Korzeniowski  
Christopher C. Bates  
Lacey Blair

August 13, 2008

RECEIVED  
AUG 14 2008

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Mr. David Ponzoha, Clerk  
Court of Appeals  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

RE: *MATTHEW HIRSCHFELDER*  
Court of Appeals No. 36804-8-II

Dear Mr. Ponzoha:

Please find enclosed the original and one copy of the Respondent's Brief in Response to Washington Education Association's Amicus Curiae Brief in the above-entitled matter. By cover of this letter, a copy has also been sent to Harriet Strasberg.

Very truly yours,

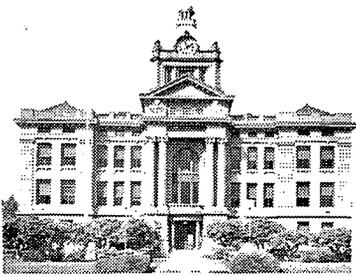
H. STEWARD MENEFEE  
Prosecuting Attorney  
for Grays Harbor County

By: 

MEGAN M. VALENTINE  
Deputy Prosecuting Attorney

MMV/cat  
Enclosure

cc: Harriet Strasberg  
*Robert Hill*



H. STEWARD MENEFEE  
 Grays Harbor County Prosecuting Attorney  
 102 W. Broadway, Room 102  
 Montesano, Washington 98563  
 360-249-3951  
 SCAN 234-5231  
 FAX 360-249-6064

CHIEF CRIMINAL DEPUTY  
 Gerald R. Fuller  
 OFFICE ADMINISTRATOR  
 Randi Toyra  
 SENIOR DEPUTIES  
 Jennifer L. Wieland  
 Rebecca L. Bernard  
 James G. Baker  
 William A. Leraas  
 DEPUTIES  
 Kraig C. Newman  
 Katherine L. Svoboda  
 Megan M. Valentine  
 Gordon Wright  
 Edgar M. Korzeniowski  
 Christopher C. Bates  
 Lacey Blair

August 14, 2008

RECEIVED  
 AUG 15 2008

CLERK OF COURT OF APPEALS DIV II  
 STATE OF WASHINGTON

Mr. David Ponzoha, Clerk  
 Court of Appeals  
 Division II  
 950 Broadway, Suite 300  
 Tacoma, WA 98402-4454

RE: *MATTHEW HIRSCHFELDER*  
 Court of Appeals No. 36804-8-II

Dear Mr. Ponzoha:

Please find enclosed Declaration of Mailing in the above-entitled matter. By cover of this letter, a copy of Respondent's Brief in Response to Washington Education Association's Amicus Curiae Brief has also been sent to Robert Hill and Matthew Hirschfelder.

Very truly yours,

H. STEWARD MENEFEE  
 Prosecuting Attorney  
 for Grays Harbor County

By: *Megan M. Valentine*  
 MEGAN M. VALENTINE  
 Deputy Prosecuting Attorney

MMV/cat  
 Enclosure

cc: Robert Hill  
 Matthew Hirschfelder

CONFIDENTIAL - This document contains information that is confidential and may be exempt from public release under the Freedom of Information Act. If you are not the intended recipient, you should not disseminate, distribute or copy this document. If you have received this document by mistake, please notify the sender immediately by e-mail at [redacted] or by phone at [redacted].

FILED  
COURT OF APPEALS  
DIVISION II

08 AUG 15 PM 12:35

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,

Respondent,

No.: 36804-8-II

v.

**DECLARATION OF MAILING**

MATTHEW HIRSCHFELDER,

Appellant.

**DECLARATION**

I, *Carol Thomas* hereby declare as follows:

On the 14<sup>th</sup> day of August, 2008, I mailed a copy of the Respondent's Brief in Response to Washington Education Association's Amicus Curiae Brief to Robert Hill, Attorney at Law, 2102 Carriage Drive SW, Bldg. C., Olympia, WA 98502-570, and to Matthew Hirschfelder, 1416 Cunningham Lane S., Salem, OR 97302, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

*Carol Thomas*