

No. 84243-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FEDERAL WAY SCHOOL DISTRICT NO. 201,

Respondent,

and

DAVID VINSON,

Petitioner.

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BRIEF OF *AMICUS CURIAE*
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I. INTRODUCTION

The issues presented in this case involve the test for sufficient cause to discharge a teacher under RCW 28A.405.300 *et seq* and whether a school district has the right to seek judicial review of a hearing officer's determination when the legislature has expressly withheld such a right. The briefs submitted in support of the petition for review adequately addressed the question of whether a school district has a right of appeal. Those briefs also addressed the confusing interplay between the sufficient cause tests set forth in *Hoagland v. Mount Vernon School District No. 320*, 95 Wn.2d 424, 623 P.2d 1156 (1981) and *Clarke v. Shoreline School District No. 412*, 106 Wn.2d 102, 720 P.2d 793 (1986), as well as the unresolved question of whether the remediability prong applies to both or just one of the *Clarke* tests.

As such, this brief will focus on the application of the second *Clarke* test (conduct that lacks a positive educational aspect or legitimate professional purpose) and the circumstances under which sufficient cause may be found as a matter of law. Specifically, it will argue that from the first judicially announced definition, our courts have held that sufficient cause requires a nexus between the alleged misconduct or deficiency and the teacher's performance as a teacher, even under the second *Clarke* test. Yet, the Court of Appeals in *Federal Way School District No. 210, v. Vinson*, 154 Wn. App. 220, 225 P.3d 379 (2010), held that dishonesty during the course of an official investigation constitutes sufficient cause as

a matter of law, without determining whether such dishonesty had or would affect Mr. Vinson's teaching. In failing to find the constitutionally required nexus between the misconduct and Mr. Vinson's performance as a teacher, the Court of Appeals departed from this Court's precedent and impermissibly expanded the definition of sufficient cause.

II. ARGUMENT

A. Sufficient Cause Requires Nexus Between Misconduct and Teaching Effectiveness.

It is undisputed that the employment contract of a non-provisional teacher may not be terminated except for "sufficient cause". RCW 28A.400.300(1). Because "sufficient cause" is not defined by statute, our courts have construed the phrase to give it meaning.

One of the first occasions for sufficient cause to be defined was in *Browne v. Gear*, 21 Wash. 147, 57 P. 359 (1899). In that case, which involved the revocation of a teacher's teaching certificate, the Supreme Court defined "sufficient cause" as: "[S]uch misconduct relating to [the teacher's] duties as a common school teacher as would justify the revocation of her right to teach; that is, either such incompetency in her vocation in and about the school as made her unfit for the station, or violations of rules in teaching, etc., or such moral turpitude outside her profession as would recoil on her efficiency in her work, and injure the school." *Id.* Thus, the Court clearly established that sufficient cause requires some nexus between the complained of conduct and the teacher's

performance as a teacher. If the conduct was related to the teacher's performance—such as “incompetency” or a violation of school rules—then such nexus would be clearly established. By contrast, if the conduct was “outside” of the teacher's professional practices or performance, then it would constitute sufficient cause only if it “would recoil on [the teacher's] efficiency in her work, and injure the school”. *Browne*, 21 Wash. at 152.¹

The rule announced in *Browne* was later applied in the context of a teacher's discharge. In *Denton v. South Kitsap School District No. 402*, 10 Wn. App. 69, 516 P.2d 1080 (Div. 2, 1973), a teacher was fired for having a sexual relationship with a student of the district. On review of the board decision to uphold the termination, the appellate court noted that the term sufficient cause “has seldom been elucidated in the Washington cases” but that “unlawful sexual relations with a minor student” falls within its contemplation. *Denton*, 10 Wn. App. at 71. In reaching this determination, the court cited the *Browne* rule that sufficient cause exists when a teacher's conduct, or “moral turpitude”, outside the profession “would recoil upon a teacher's efficiency and injure the school” *Denton*, 10 Wn. App. at 72, citing *Browne v. Gear*, 21 Wash. 147, 57 P. 359 (1899).

¹ In addition to establishing this nexus requirement, the Court also affirmed that a teacher was entitled to certain due process protections, such as notice and a hearing, before she could be deprived of “vested” and “valuable” rights in her teaching certificate. *Browne*, 21 Wash. at 151-52.

The court rejected the teacher's argument that sufficient cause could not be found absent a showing that his conduct had negatively impacted his "fitness to teach". *Denton*, 10 Wn. App. at 72. The court held that where there is sexual misconduct by a teacher with a student, the required nexus to the teacher's performance or fitness will exist as a matter of law: "In our view, the school board may properly conclude in such a situation that the conduct is inherently harmful to the teacher-student relation, and thus to the school district." *Denton*, 10 Wn. App. at 72. Thus, even though the court determined that sufficient cause existed as a matter of law, it nonetheless found the necessary nexus between the teacher's misconduct and his performance or fitness to teach.

Subsequently, the Supreme Court, relying on *Denton*, expressly held that sufficient cause for discharge requires a nexus between a teacher's deficiency and his performance as a teacher. In *Gaylord v. Tacoma School District No. 10*, 85 Wn.2d 348, 535 P.2d 804 (1975) ("Gaylord I") and *Gaylord v. Tacoma School District No. 10*, 88 Wn.2d 286, 559 P.2d 1340 (1977) ("Gaylord II"), the Court heard the appeal of a teacher who was fired under a school district policy prohibiting "immorality" after it was discovered that he was homosexual.²

² The Court in *Gaylord I* remanded the case because the trial court had improperly weighed the testimony of school administrators. After the trial court upheld the termination on remand, the teacher again appealed.

The *Gaylord I* Court defined sufficient cause as “conduct which would affect the teacher’s efficiency.” *Gaylord*, 85 Wn.2d at 349, citing *Browne v. Gear*, 21 Wash. 147, 57 P. 359 (1899) and *Denton v. South Kitsap School Dist.* 402, 10 Wn. App. 69, 516 P.2d 1080 (1973). In *Gaylord II*, the Court restated the rule that sufficient cause requires that the conduct at issue “adversely affect the teacher’s performance”. *Gaylord II*, 88 Wn.2d at 290, citing *Gaylord I*. According to *Gaylord II*, this required nexus is rooted in the constitution: “‘Immorality’ as a ground of teacher discharge would be unconstitutionally vague if not coupled with resulting actual or prospective adverse performance as a teacher.” *Gaylord II*, 88 Wn.2d at 290 (emphasis added), citing *Denton*, 10 Wn. App. 69 and *Morrison v. State Bd. of Education*, 1 Cal.3d 214, 225, 82 Cal. Rptr. 175, 461 P.2d 375 (1969)³.

Thus, as formulated by the Court, the teacher’s homosexuality would constitute sufficient cause only if it adversely affected his teaching efficiency. Relying on testimony by district administrators and students who objected to working with or being taught by a gay person, the Court ultimately concluded that the teacher’s efficiency and performance would be adversely affected by his homosexual status. As such, the Court found sufficient cause for his discharge.

³ In *Morrison*, the California Supreme Court held that a male teacher’s sexual relationship with another male teacher could not constitute sufficient cause for revocation of his teaching certificate unless the “immoral” or “unprofessional” conduct indicates that the petitioner is unfit to teach.

The next occasion for the Supreme Court to address the question of sufficient cause was in *Hoagland v. Mount Vernon School District No. 320*, 95 Wn.2d 424, 623 P.2d 1156 (1981). That case involved a teacher who was discharged after being convicted of grand larceny for possession of a stolen motorcycle. At trial, the court granted the district's summary judgment motion, ruling that the teacher's conviction made him unfit to teach as a matter of law. The Court of Appeals reversed and remanded for resolution of the outstanding material factual issues regarding any adverse affect to the teacher's fitness to teach (*Hoagland v. Mt. Vernon School Dist. No. 320*, 23 Wn. App. 650, 597 P.2d 1376 (1979), and the school board appealed to the Supreme Court.

At the outset of its analysis, the Supreme Court addressed whether sufficient cause could be found as a matter of law. The Court noted that there could be misconduct that is "so egregious" that the sufficient cause determination could be made as a matter of law, but then announced the following general rule: "In most cases, because the statutes do not stipulate certain conduct as per se grounds for dismissal, it will be a *question of fact* whether the complained of acts constitute sufficient cause." *Hoagland*, 95 Wn.2d at 429-28 (emphasis added), citing *Gaylord II*, *supra*; *Browne v. Gear*, *supra*; and *Board of Educ. v. Jack M.*, 19 Cal.3d 691, 566 P.2d 602, 139 Cal. Rptr. 700 (1977).

The Court proceeded to define sufficient cause as requiring "a showing of conduct which materially and substantially affects the

teacher's performance." *Hoagland*, 95 Wn.2d at 428, citing *Gaylord II*, *supra* and *Browne v. Gear*, *supra*; and *Fisher v. Snyder*, 346 F. Supp. 396 (D. Neb. 1972). The requirement of a "material and substantial" effect on a teacher's performance was first articulated in a Washington case by Justice Dolliver in his dissenting opinion in *Gaylord II*. Justice Dolliver had cited with approval the analysis of the federal district court in *Fisher v. Snyder*, 346 F. Supp. 396 (D. Neb. 1972). In *Fisher*, the court determined that there was not sufficient cause to fire a teacher who had invited men to whom she was not married to stay at her apartment. Summarizing the evidence, the court noted that there was no proof that the teacher's conduct had "affected her classroom performance, her relationship with students under her care, or otherwise had any bearing on any interest possessed by the board of education." *Fisher*, 346 F. Supp at 398. And absent a showing that the teacher's conduct "'materially and substantially' interfered with the school's work or rights of students," there could be no finding of sufficient cause. *Fisher*, 346 F. Supp. at 401.

Likewise, the *Hoagland* Court also required a clear and significant nexus between the alleged misconduct and the teacher's performance. Indeed, the Court held that "it would violate due process to discharge a teacher without showing actual impairment to performance." *Hoagland*, 95 Wn.2d at 429. To help determine whether the conduct in question "materially and substantially" undermines a teacher's effectiveness, and therefore has the necessary nexus to job performance, the Court

announced eight factors⁴ that are “obviously relevant” to the question of teaching effectiveness, which the Court described as the “touchstone for all dismissals”. *Hoagland*, 95 Wn.2d at 430. By requiring that the adverse affect be “material and substantial,” the *Hoagland* Court adopted a more stringent test for sufficient cause and underscored the importance of the nexus between a teacher’s misconduct and his or her effectiveness.

In the year following *Hoagland*, the courts of appeal heard two egregious teacher discharge cases. See *Pryse v. Yakima School District*, 30 Wn. App. 16, 632 P.2d 60 (Div. 3, 1981) and *Potter v. Kalama Public School District, No. 402*, 31 Wn. App. 838, 644 P.2d 1229 (Div. 2, 1982). Each case involved a teacher who had improper physical contact with students, and in each case, the court found sufficient cause to discharge. These cases are significant not for their holdings but because they are the source of the Supreme Court’s subsequent test for sufficient cause, namely a deficiency that “lacks any positive educational aspect or legitimate professional purpose”. See *Clarke*, 106 Wn.2d at 114. However, it is important to understand the cases from which this rule derives since neither the *Pryse* nor the *Potter* courts specifically held that sufficient

⁴ As noted in prior briefing, these factors are: (1) the age and maturity of the students; (2) the likelihood the teacher’s conduct will have adversely affected students or other teachers; (3) the degree of the anticipated adversity; (4) the proximity or remoteness in time of the conduct; (5) the extenuating or aggravating circumstances surrounding the conduct; (6) the likelihood that the conduct may be repeated; (7) the motives underlying the conduct; and (8) whether the conduct will have a chilling effect on the rights of the teachers involved or other teachers. *Hoagland*, 95 Wn.2d at 429-30.

cause exists whenever a teacher's conduct lacks a positive educational aspect or legitimate professional purpose.

In *Pryse*, a high school physical education teacher was fired for making sexually explicit remarks to and having improper physical contact with female students. On appeal, the teacher argued that sufficient cause had not been established because the district had not carried its burden of proving that the alleged conduct had affected his teaching efficiency or that the conduct was not remediable. In addressing these arguments, the court first observed that "in most teacher discharge cases," the sufficient cause determination will be a factual question and will not be made as a matter of law. *Pryse*, 30 Wn. App. at 21, citing *Hoagland*, 95 Wn.2d at 428. Nonetheless, the court rejected the argument that a showing of actual harm was required, finding inherent harm in sexual misconduct by a teacher with a student:

"We are not faced here with conduct involving a teacher's private life unrelated to school activities. *See Morrison v. State Board of Educ.*, 1 Cal.3d 214, 82 Cal. Rptr. 175, 461 P.2d 375, 381 (1969). Nor did the conduct have any positive educational aspect or legitimate professional purpose. Instead, it was sexually exploitive and occurred during school hours. Such conduct with minor students is inherently harmful to the student-teacher relationship and impacts the teacher's efficiency."

Pryse, 30 Wn. App. at 23-24, citing *Denton*, *supra*; *Weissman v. Bd. of Educ. of Jefferson County School Dist. R-1*, 190 Colo, 414, 547 P.2d 1247 (1976).

The court adopted the phrase “positive educational aspect or legitimate professional purpose” from *Weissman v. Board of Education of Jefferson County*, the Colorado case cited above. There, a teacher was fired under a statute prohibiting “immorality” after he had engaged in inappropriate conduct with female students on an overnight field trip. The Court first acknowledged that “immoral” conduct cannot constitute sufficient cause for discharge unless it relates to or affects the teacher’s work and fitness to teach. *Weissman*, 547 P.2d at 1272. Then, turning to the jokes, sexual innuendo and other “horseplay” engaged in by the teacher on the field trip, the court stated: “We find no legitimate professional purpose in the sordid conduct engaged in by appellant on the Santa Fe Trip. ... It is difficult to conceive of a single positive aspect that such behavior might have in an educational context.” *Weissman*, 547 P.2d at 1274. The Court also cited with approval the rule announced in *Denton*, *supra*, that “a male teacher’s sexual involvement with a minor female student is inherently immoral and harmful” and that such misconduct bears on a teacher’s fitness to teach, justifying dismissal. *Weissman*, 547 P.2d at 1273. Thus, the courts in *Weissman* and *Pryse* found sufficient cause as a matter of law because each teacher had engaged in sexually exploitive conduct with his students. The constitutionally required nexus between the misconduct and the teacher’s fitness was met because such conduct is “inherently” harmful to the teacher’s fitness and performance,

not because such conduct lacked any positive educational aspect or legitimate professional purpose.

In *Potter*, Division 2 of the Court of Appeals also addressed conduct lacking any positive educational aspect or legitimate professional purpose. There, the teacher argued that before he could be discharged for his in-class misconduct, he must first be given notice and placed on probation under former RCW 28A.67.065 (recodified as RCW 28A.405.100). The court rejected the argument that inappropriate physical interactions occurring during class time with fourth grade female students constituted “remedial teaching deficiencies” subject to the probationary statute. *Potter*, 31 Wn. App. at 841. The court explained that the probation statute addresses deficiencies “in teaching and classroom related performance” including instructional skill, classroom management and professional preparation and scholarship, among others. Unlike these teaching-related deficiencies, the probation statute is “not concerned with conduct which does not have any positive educational aspect or legitimate professional purpose.” *Potter*, 31 Wn. App. at 842, citing *Pryse, supra*. The *Potter* court went on to apply the *Hoagland* factors to determine that sufficient cause existed for the teacher’s discharge.

Several years later, the Supreme Court first applied the *Pryse* and *Potter* language (“lack of a positive educational aspect or legitimate professional purpose”). *Mott v. Endicott School District No. 308*, 105 Wn.2d 199, 713 P.2d 98 (1986). In *Mott*, a teacher’s contract was

terminated after four students accused him of striking them in their genitals. On appeal, the Court relied on *Pryse* and *Potter* for the proposition that conduct lacking “any positive education aspect or legitimate professional purpose” constitutes sufficient cause for discharge. *Mott*, 105 Wn.2d at 203. Further, because the teacher’s conduct was “so egregious,” the Court made the sufficient cause determination as a matter of law, without requiring a showing that the conduct had or would adversely affect the teacher’s fitness to teach.

Six months after hearing *Mott*, the Supreme Court again addressed sufficient cause, this time in the context of the discharge of a teacher with a severe and degenerative disability. *Clarke v. Shoreline School District No. 412*, 106 Wn.2d 102, 720 P.2d 793 (1986). After reviewing the holdings of prior teacher discharge cases, the Court stated the “general rule” that:

Sufficient cause for a teacher’s discharge exists as a matter of law where the teacher’s deficiency is unremediable and (1) materially and substantially affects the teacher’s performance, *Hoagland*, at 428, 623 P.2d 1156, 114 *Mott*, 105 Wn.2d at 203, 713 P.2d 98; or (2) lacks any positive educational aspect or legitimate professional purpose. *Pryse*, 30 Wn. App. at 24, 632 P.2d 60; *Potter*, 31 Wn. App. at 842, 644 P.2d 1229.”

Clarke, 106 Wn.2d at 113-14.

Thus, as formulated by the Court, sufficient cause exists as a matter of law whenever a teacher’s deficiency lacks any positive educational aspect or legitimate professional purpose. But the rule is not

as broad as it appears on its face. First, the Court cited *Pryse* and *Potter* for this newly articulated, stand-alone rule, but, as discussed above, neither case announced such a rule, nor did either court rely on this language to support the finding of sufficient cause. Rather, *Pryse* found sufficient cause as a matter of law on the basis of the teacher's egregious and sexually exploitive conduct. *Potter* found sufficient cause under the *Hoagland* factors, rejecting the teacher's argument that the conduct was subject to the probation statute since the statute is not concerned with conduct lacking a positive education aspect or legitimate professional purpose.

Second, the *Clarke* court expressly cautioned against finding sufficient cause as a matter of law except in "the most egregious cases". *Clarke*, 106 Wn.2d at 117, citing *Mott*, *supra*. When this qualification is read together with the second *Clarke* test, it is clear that not all conduct lacking a positive education aspect or legitimate professional purpose will constitute sufficient cause.

It follows that even under the second *Clarke* test, a nexus between a teacher's deficiency and his or her teaching performance is still required. As noted above, such a requirement finds its root in the constitution. *See, e.g., Hoagland*, 95 Wn.2d at 429 (holding that "it would violate due process to discharge a teacher without showing actual impairment to performance"); *Board of Education v. Jack M.*, 19 Cal.3d 691, 696, 566 P.2d 602, 139 Cal. Rptr. 700 (1977) (holding that the term "unprofessional

conduct” is so broad and vague that it would be unconstitutional to find sufficient cause on that basis without requiring a nexus to a person’s fitness to teach), citing *Morrison, supra*. In addition, the *Clarke* Court did not rely on its newly articulated test to find sufficient cause for termination. Rather, the discharge was upheld because the Court found, after applying the *Hoagland* factors, that the teacher’s disability “materially and substantially” affected his performance. *Clarke*, 106 Wn.2d at 115-17. In short, the Court expressly found the constitutionally required nexus between the teacher’s deficiency and his effectiveness as a teacher in making the sufficient cause determination. Thus, when read as a whole, the *Clarke* opinion clearly did not abrogate the required nexus between a teacher’s deficiency and performance.

Subsequent cases applying the second *Clarke* test support the view that the test is not as broad as its express language would indicate. For instance, in *Sauter v. Mount Vernon School District No. 320*, 58 Wn. App. 121, 791 P.2d 549 (Div. 1, 1990), a teacher was fired attempting to seduce a student. The court found sufficient cause under the second *Clarke* test: “Appellant’s conduct was sexually exploitive and related to his conduct as a teacher. ... As in *Pryse* and *Potter*, appellant’s conduct here did not have any positive educational aspect or legitimate professional purpose. Therefore, there was sufficient cause for appellant’s discharge as a matter of law.” *Sauter*, 58 Wn. App. at 132. As noted, the *Sauter* court clearly found a nexus between the teacher’s misconduct and his performance as a

teacher. Indeed, the *Sauter* court expressly stated that such a nexus is inherent in the second *Clarke* test, explaining that the test “refers to conduct which by its very nature affects one’s fitness to teach...” *Sauter*, 58 Wn. App. at 132.

In *Ruchert v. Freeman School District*, 106 Wn. App. 203, 22 P.3d 841 (Div. 3, 2001), the court of appeals squarely addressed the question of whether the *Clarke* test requires a nexus between the complained of conduct and a teacher’s performance. In answering this question in the affirmative, the court explained:

The *Clarke* rule was developed and, is usually applied, to assess the on-site job performance or deficiencies of school district employees. ... This underlying nexus is suggested by the language of the *Clarke* rule that refers to “deficiencies” rather than “conduct.” From our examination of [*Clarke, supra, Butler v. Lamont School District No. 246*, 49 Wn. App. 709, 745 P.2d 1308 (1987) and *Sauter, supra*], we conclude that the *Clarke* rule presumes a nexus between the conduct in question and the employee’s job performance.

Ruchert, 106 Wn. App. at 211.

More recently, the second *Clarke* test was used to uphold the termination of a school psychologist who had falsified special education records to reflect compliance with applicable regulations. *Weems v. North Franklin School District*, 109 Wn. App. 767, 37 P.3d 354 (Div. 3, 2002). In making the sufficient cause determination, the court first noted that falsification of records is expressly defined as “unprofessional conduct” under WAC 180-87-050 (recodified at WAC 181-87-050), and that

unprofessional conduct is grounds for revoking a teaching certificate under RCW 28A.410.090 and WAC 180-87-005 (recodified at WAC 181-87-005). *Weems*, 109 Wn. App. at 776-77. Then, citing the second *Clarke* test, the court summarily concluded that because Dr. Weems' conduct "served no educational or legitimate professional purpose" it constituted sufficient cause for discharge. *Weems*, 109 Wn. App. at 777.

The court did not specifically address whether there was a nexus between the misconduct and Dr. Weems' job performance. However, that nexus necessarily exists since the misconduct occurred during and was directly related to Dr. Weems' performance of his official duties as a school psychologist and special education director.

B. The *Vinson* Court Misapplied the Second *Clarke* Test.

Despite the clear authority to the contrary, the court in *Vinson* applied the second *Clarke* test as not requiring any nexus between the misconduct and teaching effectiveness. The court held that "under the second *Clarke* test, lying during the course of an official investigation of professional misconduct lacks any professional purpose and is sufficient cause for termination as a matter of law." *Vinson*, 154 Wn. App. at 230. The court noted that Mr. Vinson's misconduct occurred "at work, on work time, and in violation of his duties as a district employee to cooperate with the investigation of other alleged misconduct". *Id.* However, the nexus requirement is not met simply because the misconduct is work-related.

Rather, the real question is whether the misconduct impaired Mr. Vinson's teaching performance or effectiveness, which is the "touchstone" of all discharge determinations. See *Hoagland*, 95 Wn.2d at 430. By failing to answer this crucial question, the *Vinson* court did not conduct the necessary analysis and misapplied the *Clarke* test.

In addition, the facts of *Vinson* are distinguishable from *Weems*, even though each case involved work place dishonesty. In *Weems*, the dishonesty was directly related to Dr. Weems' responsibilities as the special education director. To feign compliance with federal and state regulations, Dr. Weems falsified the very special education records that he was responsible for maintaining. In short, Dr. Weems' dishonesty directly related to his fitness to perform the duties for which he was hired. Under such circumstances, the nexus between the misconduct and Dr. Weems' performance is clear.

By contrast, the dishonesty in *Vinson* occurred while Mr. Vinson was being investigated about other alleged misconduct, not in the classroom or in the course of his teaching-related duties. As such, there is no inherent connection or nexus between Mr. Vinson's dishonesty and his teaching effectiveness. It simply cannot be said as a matter of law that the misconduct was "directly related to his conduct as a teacher" (*Sauter*, 58 Wn. App. at 132) or "inherently harmful to the student-teacher relationship" (*Denton*, 10 Wn. App. at 72; *Pryse*, 30 Wn. App. at 24). By applying the second *Clarke* test without requiring a nexus between the

misconduct and teaching effectiveness, the *Vinson* court impermissibly broadened the test of sufficient cause.

Under *Vinson*, any misconduct occurring at work that lacks a positive educational aspect or legitimate professional purpose would constitute sufficient cause for discharge. Indeed, under the rule announced in *Vinson*, a teacher who uses the school photocopier for personal use could be fired since such use of the copy machine serves no positive educational aspect or legitimate professional purpose. Or, assume a teacher is accused of stealing a district computer and that during the course of the investigation, the teacher says that she could not have stolen the computer because she was at a movie with a friend at the time of the theft. Under *Vinson*, there would be sufficient cause to discharge the teacher if the district later learned that the teacher was lying as to her whereabouts at the time of the theft, and that she was actually engaged in an extramarital affair and not at a movie with a friend. This result would be true even though the teacher clearly could not have stolen the computer and even though she had a legitimate reason to withhold her actual whereabouts from her employer.

In addition to reaching conduct unrelated to teaching effectiveness, the rule as applied in *Vinson* also expands the circumstances under which sufficient cause may be found as a matter of law. Prior to *Vinson*, it was clear that the sufficient cause determination could be made as a matter of law in only the most "egregious" cases. *Hoagland*, 95 Wn.2d at 428.

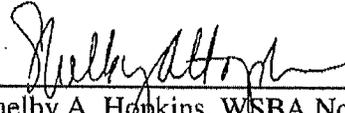
These “egregious” cases involved sexual exploitation (*Denton, Pryse* and *Sauter*) and physical abuse (*Mott*) of students. It simply cannot be said that lying, even during the course of an official investigation, is behavior of an equivalent or similar nature as sexual misconduct or physical abuse of students.

III. CONCLUSION

In sum, the *Vinson* court has impermissibly expanded the test of sufficient cause, abandoning the constitutionally required nexus between the alleged misconduct and teaching effectiveness such that any conduct that lacks a positive educational aspect or legitimate professional purpose will constitute sufficient cause. The *Vinson* court’s holding calls to mind Justice Dolliver’s prescient warning in his well reasoned *Gaylord II* dissent: “The opportunities for industrious school districts seem unlimited.” *Gaylord II*, 88 Wn. 2d at 302-03.

For the reasons set forth above, as well as those articulated in the Petition for Review and the Brief of Amicus Curiae in Support of Petition for Review, this Court should reverse the Court of Appeals’ holding in *Vinson*.

Respectfully submitted this 27th day of December, 2010.



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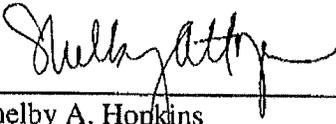
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I delivered via email and hand delivery a true and accurate copy of the foregoing Brief of Amicus Curiae to the following:

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Dated this 27th day of December, 2010, at Federal Way, Washington.



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Dear Clerk:

Attached please find the brief of Amicus Curiae Washington Education Association for filing with the Court in Case Number 84243-4, Federal Way School District No. 210 v. David Vinson.

Thank you for your courtesies.

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