

NO. 84243-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FEDERAL WAY SCHOOL DISTRICT NO. 210,

Respondent,

v.

DAVID VINSON,

Petitioner.

FEDERAL WAY SCHOOL DISTRICT'S ANSWER
TO AMICUS CURIAE

Jeffrey Ganson
WSBA #26469
Rachel E. Miller
WSBA #29677
Attorneys for Federal Way School
District

Dionne & Rorick
Attorneys at Law
900 Two Union Square
601 Union Street
Seattle, Washington 98101
Tel: (206) 622-0203
Fax: (206) 223-2003

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
10 MARCH AM 10:55
BY RONALD R. CARPENTER
CLERK

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

I. RELIEF REQUESTED 1

II. ARGUMENT..... 2

 A. WEA fails to establish that any of the claimed errors warrant review under RAP 13.4(b)..... 2

 B. WEA wrongly claims that clarification of the sufficient cause standards is required after *Vinson*. 2

 C. Because the Legislature has acquiesced to the thirty-year old Court of Appeals decisions in *Kelso v. Howell* and *Coupeville School District v. Vivian*, review of *Vinson* is not warranted. 5

 D. The Court of Appeals correctly applied de novo review to the hearing officer’s decision regarding what law to apply. 6

III. CONCLUSION 8

TABLE OF AUTHORITIES

Cases

<i>Bates v. Board of Industrial Insurance Appeals</i> , 51 Wn.2d 125, 316 P.2d 467 (1957).....	6
<i>Clarke v. Shoreline School District No. 412</i> , 106 Wn.2d 102, 720 P.2d 793 (1986).....	3, 7
<i>Coupeville Sch. Dist. v. Vivian</i> , 36 Wn. App. 728, 677 P.2d 192 (1984).....	6
<i>Federal Way Sch. District No. 210 v. Vinson</i> , No. 61752-4-I, slip op. (Wash. Ct. App. Jan. 25, 2010).....	1
<i>Hoagland v. Mount Vernon Sch. Dist.</i> 320, 95 Wash.2d 424, 623 P.2d 1156 (1981).....	5, 6
<i>Kelso Sch. Dist. v. Howell</i> , 27 Wn. App. 698, 621 P.2d 162 (1980).....	6
<i>Mott v. Endicott Sch. Dist.</i> 308, 105 Wash.2d 199, 713 P.2d 98 (1986).....	4
<i>Potter v. Kalama Pub. Sch. Dist.</i> 402, 31 Wash.App. 838, 644 P.2d 1229 (1982).....	4
<i>Pryse v. Yakima Sch. Dist.</i> 7, 30 Wash.App. 16, 632 P.2d 60 (1981).....	4
<i>Ruchert v. Freeman Sch. Dist.</i> , 106 Wn. App. 203, 22 P.3d 841 (2001).....	3
<i>Ruchert v. Freeman School Dist.</i> , 145 Wn.2d 1005, 35 P.3d 381 (2001).....	4
<i>Sauter v. Mt. Vernon School District</i> , 58 Wn. App. 121, 791 P.2d 549 (1990).....	3, 4
<i>Simmons v. Vancouver Sch. Dist.</i> 37, 41 Wash.App. at 379, 704 P.2d 648.....	4
<i>Sunderland Family Treatment Servs. v. City of Pasco</i> , 127 Wn.2d 782, 903 P.2d 986 (1995).....	7
<i>Weems v. North Franklin Sch. Dist.</i> , 109 Wn. App. 767, 37 P.3d 354 (2002).....	3
<i>Wojt v. Chimacum Sch. Dist.</i> 49, 9 Wash.App. 857, 516 P.2d 1099 (1973) ...	4

Wolf v. Columbia School Dist. No. 400, 86 Wn. App. 772, 938 P.2d 357
(1997)..... 5

Wright v. Mead Sch. Dist. No. 354, 87 Wn. App. 624, 944 P.2d 1 (1997)..... 3

Statutes

RCW 28A.405.300 2, 3, 6

RCW 28A.58.099 4

RCW 28A.67.065(1)..... 4

RCW 7.16.040 6

RCW 7.16.120(3)..... 7

Rules

RAP 10.3(e) 1

RAP 13.4(b)..... 1, 2, 5, 8

I. RELIEF REQUESTED

Federal Way School District (hereinafter "District") reiterates its request that this Court deny David Vinson's Petition for Review. Amicus Curiae, the Washington Education Association (hereinafter "WEA"), fails to raise any additional grounds that warrant review under RAP 13.4(b). WEA's brief is repetitive, offering no additional issues for this Court to consider, contravening the directive of RAP 10.3(e).

It is undisputed that Vinson lied to a District administrator in the course of a formal investigation into other alleged misconduct. Vinson's dishonesty occurred on school property, during the workday, and was directly related to his duties as a public employee. The Court of Appeals in *Federal Way Sch. District No. 210 v. Vinson*, No. 61752-4-I, slip op. (Wash. Ct. App. Jan. 25, 2010), applied well settled law to craft a narrow holding: where a certificated teacher commits misconduct that has no professional or educational purpose and directly relates to his or her professional duties, a school district has sufficient cause for discharge. *Vinson* involves neither a conflict of law between the divisions of the Court of Appeals and/or any decisions by the Supreme Court, nor does it involve an issue of substantial public importance. Consequently, the District urges this Court to deny the Petition for Review.

II. ARGUMENT

- A. WEA fails to establish that any of the claimed errors warrant review under RAP 13.4(b).

Amicus Curiae's claimed errors are mere repetitions of those arguments presented by the Petitioner, offering no new grounds to justify review by this Court. Under RAP 13.4(b), a petition for Supreme Court review will only be granted if one of the following criteria is established:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4 (b).

Like the Petition for Review, the arguments by WEA are belated attempts to obtain review of well-established legal principles regarding sufficient cause for discharge of a certificated employee under RCW 28A.405.300. Because WEA and Petitioner fail to meet the threshold requirements for review under RAP 13.4(b), this Court should deny the Petition for Review.

- B. WEA wrongly claims that clarification of the sufficient cause standards is required after *Vinson*.

WEA argues that this Court should grant review in order to reverse

well-settled case law regarding sufficient cause for discharge under RCW 28A.405.300. The claimed errors are nothing more than post-hoc attacks seeking to undo twenty years of settled case law. This Court should deny Vinson's Petition for Review on these grounds.

First, WEA claims that review is appropriate to reverse *Sauter v. Mt. Vernon School District*, 58 Wn. App. 121, 791 P.2d 549 (1990), which held that remediability need not be considered where the certificated teacher's conduct lacks any positive educational aspect or legitimate professional purpose. WEA Br. at 4. WEA claims that *Sauter* and the three subsequent Court of Appeals decisions that adopt this interpretation of the remediability rule inappropriately alter this Court's opinion in *Clarke v. Shoreline School District No. 412*, 106 Wn.2d 102, 720 P.2d 793 (1986). See *Ruchert v. Freeman Sch. Dist.*, 106 Wn. App. 203, 211, 22 P.3d 841 (2001); *Wright v. Mead Sch. Dist. No. 354*, 87 Wn. App. 624, 630-31, 944 P.2d 1 (1997); *Weems v. North Franklin Sch. Dist.*, 109 Wn. App. 767, 776, 37 P.3d 354 (2002). The District's Answer to Vinson's Petition for Review addresses WEA's claimed error. Answer to Petition for Review at 14.

Additionally, review is not appropriate because *Sauter* is consistent with *Clarke's* discussion of the remediability requirement. *Clarke* explained that some misconduct is a sufficient cause for discharge as a matter of law,

suggesting it is not remediable.¹ Moreover, this Court has previously denied review of this issue in *Ruchert v. Freeman School Dist.*, 145 Wn.2d 1005, 35 P.3d 381 (2001), where Division III of the Court of Appeals applied the *Sauter* holding to a school district's discharge of a classified employee. WEA provides no justification as to why review of this settled law is now appropriate.

¹ The *Clarke* court summarized prior case law, explaining:

The term "sufficient cause" under RCW 28A.58.099 has been limited by court interpretation to prohibit discharge for a "remediable teaching deficiency", unless school authorities comply with the requirements of RCW 28A.67.065(1). See *Wojt v. Chimacum Sch. Dist.* 49, 9 Wash.App. 857, 861-62, 516 P.2d 1099 (1973) (inability to maintain discipline and deficient teaching methods constitute remediable teaching deficiencies). In *Hoagland v. Mount Vernon Sch. Dist.* 320, 95 Wash.2d 424, 428, 623 P.2d 1156 (1981) this court interpreted "sufficient cause", in the context of a nonremediable teaching deficiency, to mean a showing of conduct "which materially and substantially affects the teacher's performance." See also *Simmons v. Vancouver Sch. Dist.* 37, supra, 41 Wash.App. at 379, 704 P.2d 648. Similarly, the Court of Appeals has upheld teacher dismissals where the conduct at issue lacked "any positive educational aspect or legitimate professional purpose." *Pryse v. Yakima Sch. Dist.* 7, 30 Wash.App. 16, 24, 632 P.2d 60 (1981); *Potter v. Kalama Pub. Sch. Dist.* 402, 31 Wash.App. 838, 842, 644 P.2d 1229 (1982). This court recently has observed that, "in some instances, teacher misconduct can be so egregious that the sufficient cause determination can be made as a matter of law." *Mott v. Endicott Sch. Dist.* 308, 105 Wash.2d 199, 203, 713 P.2d 98 (1986).

Clarke, 106 Wn.2d at 113.

Second, WEA vaguely contends that the *Vinson* decision created confusion in how to apply the *Hoagland* and *Clarke* factors. Yet, WEA fails to establish that *Vinson* conflicts with decisions from this Court or the Court of Appeals. WEA's characterization of potential confusion on the legal landscape is flat wrong; no confusion results from *Vinson*'s application of well-settled law. As the District's Answer to *Vinson*'s Petition for Review details, where a teacher commits on-duty misconduct that does not involve classroom performance deficiencies, application of the *Hoagland* factors is error. See District's Answer to Petition for Review at 10-13; see also *Wolf v. Columbia School Dist. No. 400*, 86 Wn. App. 772, 938 P.2d 357 (1997)(school employee who aimed and fired a gun while on school property does not require application of *Hoagland* factors because conduct is prohibited by District rules).

This Court should deny *Vinson*'s Petition for Review because he and Amicus Curiae fail to establish that review of these claimed errors is warranted by RAP 13.4(b).

C. Because the Legislature has acquiesced to the thirty-year old Court of Appeals decisions in *Kelso v. Howell* and *Coupeville School District v. Vivian*, review of *Vinson* is not warranted.

WEA repeats *Vinson*'s argument that review is appropriate to reverse well-settled law regarding a District's right to seek review of a

hearing officer's decision by a statutory writ of review, RCW 7.16.040. The District relies on its discussion in its Answer to Petition for Review in responding to WEA's claimed error. Answer to Petition for Review at 15-18. To summarize, review is not warranted where the Legislature has assented to the *Kelso Sch. Dist. v. Howell*, 27 Wn. App. 698, 621 P.2d 162 (1980), and *Coupeville Sch. Dist. v. Vivian*, 36 Wn. App. 728, 677 P.2d 192 (1984), courts' interpretation of RCW 28A.405.300, and *Bates v. Board of Industrial Insurance Appeals*, 51 Wn.2d 125, 316 P.2d 467 (1957), does not control the outcome of the issue.

D. The Court of Appeals correctly applied de novo review to the hearing officer's decision regarding what law to apply.

WEA wrongly claims that the Court of Appeals should have employed a more deferential standard of review. WEA Br. at 17.

Here, the central issue on appeal was whether the superior court abused its discretion when it denied the writ of review, even though the Hearing Officer committed an obvious error of law. Therefore, the Court of Appeals had to determine if, as a matter of law, the hearing officer erred by applying the legal test outlined in *Hoagland* and concluding that Vinson's proven job-related misconduct did not constitute sufficient cause for discharge. Issues of law are reviewed de novo to determine whether the

decision below was contrary to law. RCW 7.16.120(3); *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986 (1995). Because no authority supports the Hearing Officer's conclusion to apply the *Hoagland* factors to on the job misconduct, the Court of Appeals correctly held that the superior court abused its discretion in not granting the writ for this error of law.

Moreover, review is inappropriate based on this claimed error because the Court of Appeals correctly applied the facts as found by the Hearing Officer. Specifically, because the District did not assign error to the Hearing Officer's findings of fact, the Court of Appeals assumed that these were verities on appeal. Accordingly, the Court based its decision that Vinson had engaged in misconduct on Finding of Fact 17, where the Hearing Officer found that Vinson admitted to lying to the District investigator ("Mr. Vinson admits that he lied in response to certain questions posed to him by Mr. Wood during the course of the investigation.") Hearing Examiner's Decision at 4. The fact that Vinson lied during the course of a formal district investigation was material to the Court's inquiry under the second *Clarke* test.

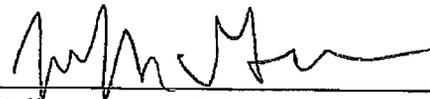
Because the Court of Appeals applied the correct standard of review, review by this Court is unnecessary and inappropriate under RAP 13.4(b).

III. CONCLUSION

For the foregoing reasons, the Federal Way School District respectfully requests that this Court deny Vinson's Petition for Review.

RESPECTFULLY SUBMITTED this 17th day of May, 2010.

DIONNE & RORICK



By: Jeffrey Ganson, WSBA #26469
Rachel E. Miller, WSBA #29677
Attorneys for Federal Way School
District

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent *via ABC Legal Messengers* a true and accurate copy of the Federal Way School District's Answer to Washington Education Association's Amicus Curiae to the following:

Tyler K. Firkins
Van Sicle, Stocks & Firkins
721 45th Street Northeast
Auburn, Washington 98002-1381

Shelby A. Hopkins
Washington Education Association
32032 Weyerhaeuser Way S.
Federal Way, WA 98001-9687

Dated this 17th day of May, 2010.


By: Cynthia Nelson

OFFICE RECEPTIONIST, CLERK

To: Cyndi Nelson
Subject: RE: Fedwy S.D. v. D.Vinson, No. 84243-4

Rec'd 5/17/2010

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Cyndi Nelson [mailto:cyndi@dionne-rorick.com]
Sent: Monday, May 17, 2010 10:04 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Fedwy S.D. v. D.Vinson, No. 84243-4

Re: Federal Way School District v. David Vinson; Case No. 84243-4

Attached for filing is a copy of the Federal Way School District's Answer to Amicus Curiae; and Certificate of Service.

The attorney filing this document on behalf of the District is:

Jeffrey Ganson, WSBA#26469
Dionne & Rorick
601 Union St., Suite 900
Seattle, WA 98101
Tel: (206) 622-0203
Email: jeff@dionne-rorick.com

Thank you.

Cynthia Nelson
Assistant to Jeffrey Ganson
DIONNE & RORICK

ATTORNEYS AT LAW	TEL (206) 622-0203
900 TWO UNION SQUARE	FAX (206) 223-2003
601 UNION STREET	
SEATTLE WASHINGTON 98101	cyndi@dionne-rorick.com



This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the named recipient(s), please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client product, or other applicable privilege. Thank you.