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71194-6

NO. 7-1194-6-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

COLLIN WILLIAMS,

Appellant,

v.

SEATTLE SCHOOL DISTRICT NO. 1,

Respondent.

BRIEF OF RESPONDENT

GREGORY JACKSON, WSBA #17541
Freimund Jackson & Tardif, PLLC
701 5TH Avenue, Suite 3545
Seattle, WA 98104
(206) 582-6001
Gregj@fjtlaw.com
Attorneys for Respondent

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I. INTRODUCTION

Respondent Seattle Public School District No. 1 (hereafter the District) notified Appellant Collin Williams (hereafter Mr. Williams) on May 7, 2012, that there was sufficient cause to non-renew his teaching contract for his failure to make suitable progress during his 60-day probation period prescribed by RCW 28A.400.100(4). Mr. Williams timely appealed the District's decision to non-renew and requested a hearing pursuant to RCW 28A.405.210 and RCW 28A.405.310.

Mr. Williams' appeal hearing occurred on November 19 and 20, 2012, before the Honorable Terry Lukens, Ret., who served as the Hearing Officer. The Hearing Officer issued a written decision on February 15, 2013, including findings of fact and conclusions of law, affirming that there was sufficient cause to non-renew Mr. Williams' employment contract. Mr. Williams timely appealed the Hearing Officer's decision to the superior court.

On October 23, 2013, King County Superior Court Judge Kimberly Prochnau heard Mr. Williams' appeal and issued a written decision affirming that there was sufficient cause to non-renew Mr. Williams' employment contract. The findings of fact of the superior court included the following:

- Article XI of the collective bargaining agreement (CBA) for 2010-2013 between the Seattle School District and the Appellant's union provided that a new teacher evaluation program would be phased in over three years. CABR RHE 1, Section H, Bates No. 00000798.
- Assignment of Error #1 claim that Appellant was not properly placed on probation is not supported by the record. The CBA between the parties required a teacher of his experience to be proficient in all domains and his 2011-2012 mid-year evaluation found him deficient in one or more of these domains. CABR RHE 1, Section E (4), Bates No. 00000796, CABR RHE 13, Bates No. 00000300-311.
- Under the CBA, the Appellant was not initially among the class of employees automatically subject to the comprehensive evaluation process but was subject to a more general annual evaluation. However, Appellant opted to be evaluated under the Comprehensive Evaluation process; as permitted under Article XI, Section H of the CBA. CABR RHE 6, Bates No. 00000836.
- During his 2011 annual evaluation Appellant failed to obtain the required proficient rating in all of the evaluative criteria, and a Performance Improvement Plan was implemented. CABR RHE 6, Bates No. 00000257-269.
- On January 13, 2012, Interim Superintendent Enfield notified Appellant that he would be placed on 60 days' probation to remediate his deficiencies in all four domains. CABR RHE 14, Bates No. 00000229-230.
- Under Mr. Burton's evaluation Appellant again failed to achieve proficient ratings. Another evaluator, Ms. Bartron, was assigned to evaluate the Appellant in February 2012 and Appellant was again unsuccessful at achieving a proficient rating. CABR, RHE 34, Bates No. 00000322-337.

- Specifically, Appellant did not receive performance ratings of proficient or above in each of the four domains as required for a teacher with his or her years of experience. *Id.* RHE 34, *Id.*

Mr. Williams now seeks review of the decisions of the Hearing Officer but he fails to assign error to any action or decision made by the superior court. Mr. Williams' failure to assign error to a decision of the superior court violates RAP 10.3 that requires appellants to set forth specific assignments of error for which they seek review. Additionally, Mr. Williams' opening brief raises issues on appeal that were not argued in the superior court and that cannot be raised for the first time on appeal without violating RAP 2.5(a).

II. ISSUES

Should the Court of Appeals refuse to hear an appeal where the appellant fails to file assignments of error to any decision of the superior court required by RAP 10.3(a)(4)?

Should the Court of Appeals refuse to hear an appeal where the appellant raises arguments on appeal that he failed to raise in the superior court in violation of RAP 2.5(a)?

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III. STATEMENT OF THE CASE

A. The PG& E Evaluation System

In 2010, the Washington State Legislature passed RCW 28A.405.100 that required all public school districts to adopt a new certificated teacher evaluation system. The statute provided, in pertinent part, “Pursuant to the implementation schedule established in subsection (7)(c) of this section, every board of directors shall...establish revised evaluative criteria and a four-level rating system for all certificated classroom teachers.” RCW 28A.405.100(2)(a).

The implementation schedule established by RCW 28A.405.100 (7)(c) required districts to phase in the new teacher evaluation system during the 2010-2011 school year and for the phase-in to be complete during the 2013-2014 school year. RCW 28A.405.100(1)(a)(b) and (2)(a). The District began phasing out its old certificated teacher evaluation systems called the Performance Evaluation System (PES) and the Professional Growth Cycle (PGC) during the 2010-2011 school year and replacing it with a new certificated teacher evaluation tool called the Professional Growth and Evaluation System (PG& E). Verbatim Report of Proceedings (VP) 54.

The PG& E certificated teacher evaluation system was formally adopted by the District before the 2010 amendment to RCW 28A.405.100.

VP 126 (Testimony of Interim Superintendent Enfield). The PG& E certificated teacher evaluation system was included in the collective bargaining agreement between the District and the Seattle Education Association, the teacher's union and Mr. Williams' official bargaining agent. *See* Certified Appeal Board Report (CABR), Doc. 6; Respondent's Hearing Exhibit (RHE) 1 (Article I, Section A (1)-(3) and Article XI, Sections C-N), pp. 101-09.

Mr. Williams voluntarily opted into the new PG& E evaluation system on November 4, 2010. VP 360, ll. 23-25; CABR RHE 5 (Individual Voluntary Request to Participate in Professional Growth & Evaluation System 2010-11), Bates No. 00000836.

RCW 28A.405.100(2)(c) prescribes that teachers on the PG& E system shall be rated on their performance in four categories called "domains."

- i. Planning and Preparation
- ii. Classroom Environment
- iii. Instruction
- iv. Professional Responsibility

CABR RHE 1, Bates No. 00000794. Each domain contains five or six components. Teaching performance in each domain is scored and rated in one of four performance levels.

Level 1 is Unsatisfactory and the lowest rating
Level 2 is Basic

Level 3 is Proficient
Level 4 is Distinguished and the highest rating

A rating of “unsatisfactory” on any domain component results in an overall domain rating of “unsatisfactory.” *Id.* Teachers must score proficient or above in four components of a domain and basic in the remaining components of a domain to receive a proficient rating for that domain. *Id.* Teachers with four or more years of teaching experience must be proficient in all four domains to demonstrate satisfactory teaching performance. *Id.*, Bates Nos. 00000795-00000796. Teachers must demonstrate the ability to perform consistently at a proficient level in each domain to receive a proficient rating. VP 167-68.

B. Teachers With Four Or More Years Of Experience Must Maintain A Proficient Rating Or They Are Placed On A Support Plan To Improve

Teachers with four or more years of teaching experience must maintain a proficient rating in all domains or they are placed on a support plan to improve their teaching deficiencies. CABR RHE 6 (Support Plan), Bates Nos. 00000267-00000269. Teachers who fail to remediate their teaching deficiencies by becoming proficient in all domains during their support plan are placed on probation as prescribed in RCW 28A.405.100(4). CABR RHE 33 (PIP), Bates Nos. 00000318-00000321. Teachers who fail to cure their teaching deficiencies during probation are

subject to non-renewal because “[l]ack of necessary improvement during the established probationary period, as specifically documented in writing with notification to the probationer constitutes grounds for a finding of probable cause under RCW 28A.405.300 or 28A.405.210.” RCW 28A.405.100(4)(b).

C. Mr. Williams’ Support Plan

On May 6, 2011, Denny International Middle School Assistant Principal Chanda Oatis drafted Appellant’s 2010-2011 Annual Evaluation and rated his performance in the four domains as follows:

Domain 1:	Planning & Preparation	Basic
Domain 2:	Classroom Environment	Basic
Domain 3:	Instruction	Basic
Domain 4:	Professional Responsibilities	Basic

CABR RHE 6 (2010-2011 Annual Evaluation at Support Plan), Bates Nos. 00000257-00000266. Mr. Williams was informed that his teaching performance “[h]as dropped below Proficient but overall performance is Basic and requires a Support Plan in order to achieve a Proficient rating in all domains.” *Id.*, Bates No. 00000266. Mr. William’s Support Plan notified him that “[i]f, after 60 days, the needed improvements are made, the support plan will be discontinued.” Mr. Williams was also notified that “[i]f, after 60 days, the needed improvement is not made, probation and the creation of a P.I.P. will be the next step.” CABR RHE 6 (2010-

2011 Annual Evaluation at Support Plan), Bates No. 00000267. Mr. Williams began the 2011-2012 school year on a support plan. *Id.*

Denny International Middle School Assistant Principal Artise Burton was Mr. Williams' primary evaluator and observed Mr. Williams' classroom performance on the following dates during his support plan.

October 13, 2011 Observation Report	(CABR RHE 7)
October 20, 2011 Observation Report	(CABR RHE 8)
October 26, 2011 Observation Report	(CABR RHE 9)
November 10, 2011 Observation Report	(CABR RHE 10)
November 17, 2011 Observation Report	(CABR RHE 11)
December 8, 2011 Observation Report	(CABR RHE 12)

Based upon these observations, Primary Evaluator Burton rated Mr. Williams' performance in each domain at the conclusion of his 60-day support plan as follows.

Domain 1:	Planning & Preparation	Basic
Domain 2:	Classroom Environment	Basic
Domain 3:	Instruction	Basic
Domain 4:	Professional Responsibilities	Unsatisfactory

CABR RHE 13 (2011-2012 Mid-Year Evaluation), Bates Nos. 00000300-00000311. Thus, Mr. Williams' performance remained basic in Domains 1-3 and was worse in Domain 4. *Id.*; CABR RHE 6 (2010-2011 Annual Evaluation at Support Plan), Bates Nos. 00000267.

D. Mr. Williams' Probation

On January 13, 2012, Interim Superintendent Dr. Susan Enfield notified Mr. Williams that he would be placed on a 60-day probation

period to remediate his teaching deficiencies in all four domains: 1) Planning and Preparation; 2) Classroom Environment; 3) Instruction; and 4) Professional Responsibilities. CABR RHE 14 (January 13, 2012, Dr. Enfield Letter), Bates Nos. 00000229-00000230. Mr. Williams was advised that if he did not improve his teacher rating to “proficient” in each domain, his teaching contract could be non-renewed. *Id.*

The District provided Mr. Williams with two evaluators for the probationary process. Mr. Williams’ Primary Evaluator was Assistant Principal Burton and the Second Evaluator was Ruth Bartron.

Primary Evaluator Burton’s final evaluation ratings for Mr. Williams read:

Domain 1:	Basic
Domain 2:	Proficient
Domain 3:	Basic
Domain 4:	Unsatisfactory

CABR RHE 34, Bates 00000322-00000337.

Primary Evaluator Burton testified regarding Mr. Williams progress on probation:

- 4 Q Did Mr. Williams improve his teaching deficiencies
in the four
5 domains?
6 A Not all four, he did not.

VP 167-68.

1. Second Evaluator Bartron's Observations And Evaluations

Second Evaluator Ruth Bartron conducted her observations of Mr. Williams' classroom performance independently of Primary Evaluator Burton and noted in her first observations that Mr. Williams' teaching performance was "basic" in domains 2D, 3B and 3C and "unsatisfactory" in 2B, 2C and 3D. CABR RHE 22, Bates No. 00000430.

Second Evaluator Bartron testified regarding Mr. Williams' overall performance during his probation period as follows:

- 19 Q Would your overall rating for Mr. Williams be
proficient in
20 any of the domains?
21 A No.

VP 269; *See* CABR RHE 30 (Progress Report), Bates No. 00000495-00000500.

E. The Superintendent's Decision to Non-Renew

On May 7, 2012, Interim Superintendent Dr. Enfield notified Mr. Williams that probable cause existed to non-renew his employment contract pursuant to RCW 28A.405.100(4) and RCW 28A.405.210 because Mr. Williams failed to make suitable improvement during his probationary period. CABR RHE 39 (May 7, 2012, Dr. Enfield Letter), Bates No. 00000224. Mr. Williams was unsatisfactory because he was not rated as "proficient" or above in each domain. *Id.*

F. Mr. Williams' RCW 28A.405 Appeal Hearing

Mr. Williams' RCW 28A.405 appeal hearing occurred on November 19-20, 2012. The Hearing Officer affirmed the decision of the District that probable cause existed to non-renew Mr. Williams' employment contract and issued written findings of fact and conclusions of law. CABR Document 1, February 15, 2013, Decision of Hearing Officer.

G. Mr. Williams' Assignments Of Error To The Court Of Appeals

Mr. Williams' assignments of error to the Court of Appeals do not challenge any decision of the superior court. Rather, Mr. Williams alleges that the Hearing Officer committed the following errors:

1. Reversal is required because the evaluative criteria applied by the District had not been appropriately adopted.
2. Reversal is required because the Hearing Officer erred in his application of basic contract law.
3. Reversal is required because the hearing Officer erred in finding that there was sufficient cause not to renew Mr. Williams' contract because there was no evidence that Mr. Williams materially breached his promise to teach.

Appellants' Opening Brief, p. 4.

IV. ARGUMENT

A. Standard of Review

RCW 28A.405.340 prescribes the scope of superior court review of administrative appeals and provides that the superior court will review the hearing officer's decision without a jury and that review is confined to the verbatim transcript and the evidence admitted at the hearing. The superior court may affirm the hearing officer's decision; remand the decision for further proceedings; but reversal is limited to six enumerated circumstances.

The court ... may reverse the decision if the substantial rights of the employee may have been prejudiced because the decision was:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the board or hearing officer; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
- (6) Arbitrary or capricious.

RCW 28A.405.340(1) through (6). None of the six conditions for reversal are present in this case and Mr. Williams' omission of any argument to

support such a conclusion is a tacit admission that he failed to establish that any of these conditions apply.

B. Teacher Discharge Requires Probable Cause

Public school teachers are employed pursuant to one-year employment contracts that provide for dismissal or non-renewal with probable cause. *Clarke v. Shoreline Sch. Dist. No. 412*, 106 Wn.2d 102, 112, 720 P.2d 793 (1986); RCW 28A.405.300, RCW 28A.405.210, and RCW 28A.405.310. Probable cause for discharge or adverse change in the conditions of employment must be established by a preponderance of evidence and requires a school district to prove that the basis for discharge or adverse change in conditions is more probably true than not. *Peacock v. Piper*, 81 Wn.2d 731, 504 P.2d 1124 (1973); *Gaylord v. Tacoma School District*, 85 Wn.2d 348, 350, 535 P.2d 804 (1975); and WPI 21.01.

C. Failure to Make Suitable Probationary Progress Constitutes Probable Cause to Non-Renew

“The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency.” RCW 28A.405.100(4)(b). The prescribed probationary period is sixty school days and “Lack of necessary improvement during the established probationary period, as specifically documented in writing with notification to the probationer shall constitute grounds for a finding

of probable cause under RCW 28A.405.300 or 28A.405.210.” RCW 28A.405.100(4)(b). “Whether a teacher actually engaged in certain conduct or was deficient in his practices or methods clearly is a factual question.” *See Clark*, 106 Wn.2d at 110.

D. Whether Or Not There Is Sufficient Cause Is A Legal Determination

A determination that sufficient cause for a teacher’s discharge exists is a legal conclusion. *Hoagland v. Mount Vernon Sch. Dist.* 320, 95 Wn.2d 424, 428, 623 P.2d 1156 (1981). The superior court determines issues of law de novo and decides what law applies to the facts of a case. *Clarke*, 106 Wn.2d at 109. A hearing officer’s conclusion of law as to the definition of sufficient cause should not be disturbed unless it constitutes an error of law. *Clarke*, 106 Wn.2d at 110. When applying the applicable law to the facts of the case, the superior court gives deference to the factual findings of the hearings officer. *Id.* The superior court should therefore review a hearing officer’s determination that probable cause exists to non-renew under the clear error of law standard. *Id.*

E. RAP 10.3(a)(4)

Washington’s Rules of Appellate Procedure require “A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.”

RAP 10.3(a)(4). The Supreme Court will not consider on appeal issues not raised in assignments of error. *Schneider v. Forcier*, 67 Wn.2d 161, 406 P.2d 935 (1965). Appellant has the burden of drafting proper assignments of error and appellate courts may not redraft assignments of error to cure their deficiencies. *Jones v. National Bank of Commerce*, 66 Wn.2d 341, 402 P.2d 673 (1965).

No issue is presented on appeal where no error is pointed out under the assignments of error. *State v. Tanzymore*, 54 Wn.2d 290, 340 P.2d 178 (1959). The case of *Goodman v. Bethel School District No. 403*, 84 Wn.2d 120, 524 P.2d 918 (1974) is illustrative. Goodman, a certificated teacher, appealed the determination of the Bethel Board of Directors that there was sufficient cause to non-renew her certificated teaching contract. *See Goodman*, 84 Wn.2d at 122. Goodman, failed to assign error to any of the findings of fact of the Bethel Board of Directors. *Goodman*, 84 Wn.2d at 124.

The Supreme Court explained that Goodman's failure to assign error to the findings of fact of the Board of Directors precluded appellate review.

First, the assignment of error is essentially an allegation of error concerning the admission of evidence upon which the trial court based findings of fact...it is sufficient to say that since error was not assigned to any findings of fact we cannot review alleged error in the admission of evidence

(i.e., the statement of facts) upon which the findings are based.

Goodman, 84 Wn.2d at 126. The failure of Goodman to assign error to the findings of fact of the Board of Directors rendered those findings verities that could not be reviewed on appeal.

F. RAP 2.5(a)

Washington's Rules of Appellate Procedure prohibit a party from advancing arguments in the court of appeals that were not raised in the superior court. "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a).

Questions that are not presented to or considered by the trial court will not be considered on appeal. *Lawson v. Helmich*, 20 Wn.2d 167, 146 P.2d 537 (1944). Generally, appellate courts will not entertain issues raised for the first time on appeal. *River House Development Inc. v. Integrus Architecture, P.S.*, 167 Wn. App. 221, 272 P.3d 289 (2012). The exceptions to RAP 2.5(a) that allow a party to raise issues for the first time on appeal occur when an appellant challenges (1) jurisdiction of the trial court; (2) failure to establish facts upon which relive can be granted; and (3) manifest error affecting a constitutional right. *Id.* None of these issues are present here. Mr. Williams' assignments of error 1 and 2 do not challenge the jurisdiction of the superior court; they do not allege that

there is a failure to establish facts from which relief can be granted; and Plaintiff does not allege that there was a manifest error affecting a constitutional right.

G. Unchallenged Findings Of Fact Of The Superior Court Are Verities On Appeal

Where findings of fact are not challenged, they are accepted as verities on appeal and the sole appellate inquiry is to whether or not the unchallenged findings of fact support the conclusions of law of the trial court. *Persing, Dyckman & Toyne, Inc. v. George Scofield Col, Inc.*, 25 Wn. App. 580, 612 P.2d 2 (1980); *Zunino v. Rajewski*, 140 Wn. App. 215, 165 P.3d 57 (2007).

Mr. Williams has not challenged any of the findings of fact of the superior court and therefore the inquiry is whether or not the unchallenged findings of the superior court support the superior court's conclusion of law that "probable cause exists to non-renew Appellant's employment contract."

The unchallenged findings of fact support the superior court's conclusion of law that probable cause exists to non-renew Mr. Williams' contract. The unchallenged findings of fact are that Mr. Williams was properly placed on probation. The unchallenged findings of fact are that Mr. Williams voluntarily opted-in to be reviewed under the PG& E

system. The unchallenged finds of fact are that Mr. Williams did not improve his rating to proficient in all required domains during his probationary period. And it is undisputed that the trial court did not commit an obvious error of law in determining that lack of necessary improvement during probation was just cause to non-renew pursuant to RCW 48A.405.100(4).

H. Mr. Williams' First Assignment Of Error

Mr. Williams' first assignment of error that the District's certificated teacher evaluation tool "had not been properly adopted" is unsupported by the record, nor was the argument advanced in the superior court as required by RAP 2.5. Interim Superintendent Enfield testified that the District adopted the PG& E system and Mr. Williams did not produce any evidence to challenge these facts. VP 126.

It is also undisputed that the PG& E system was included in the CBA between the District and the SEA, Mr. Williams' official union bargaining agent. *See* CABR, RHE 1 (Article I, Section A (1)-(3) and Article XI, Sections C-N), pp. 101-09. It stretches the bounds of logic to conclude that Interim Superintendent and the District would agree to be contractually bound by the CBA to a certificated teacher evaluation tool that the District had not "adopted" as argued by Mr. Williams.

Mr. Williams did not preserve this alleged error for review because he did not advance this argument in the superior court as required by RAP 2.5. Mr. Williams argued in the superior court that “Reversal is required because the Hearing Officer erred by ruling that the School District’s application of the adopted Charlotte Danielson Professional Growth and Evaluation (PG& E)...**was consistently applied.**” (Appellant Superior Court Brief, p. 15.) (Emphasis added.)

Mr. Williams is arguing now that the PG& E system was not “adopted.” *See* Appellant’s Brief, pp. 4, 7. This is a separate argument than Mr. Williams argued in the superior court. The superior court should not be subject to reversal for an issue that Mr. Williams never asked it to decide.

Mr. Williams’ claim that the Hearing Officer committed an error of law by refusing to determine that the PG& E evaluation standards are arbitrary and capricious is also unsupported by the record and also another argument advanced for the first time in the court of appeals in violation of RAP 2.5. First, Mr. Williams does not identify any portion of the record to support his contention that the PG& E evaluative criteria are arbitrary or capricious.

Second, the unchallenged findings of fact of the superior court are that two independent evaluators observed Mr. Williams’ teaching

performance during his probationary period and rated him as less than proficient in each domain as required. The agreement of separate evaluators as to Mr. Williams' performance supports the conclusion that the PG& E certificated teacher evaluation system was not arbitrary or capricious.

Mr. Williams fails to offer any evidence to support his contention that the opt-in form was invalid after one year or that the form was invalid because it was signed after October 15, 2010, as argued. RCW 28A.405.100 does not provide a timeline for teachers to voluntarily opt-in to the PG& E system nor does the CBA which merely states "individual staff members and schools as a whole may opt-in to the PG& E on a voluntary basis." *See* CABR, RHE 1 (Article XI, Section H (1) (a)). Consequently, there is no support in the record for Mr. Williams' contention that his written decision to opt-in to the PG& E evaluation was invalid if signed after October 15, 2010 as alleged.

I. Mr. Williams' Second Assignment of Error

Mr. Williams' second assignment of error that the superior court committed an error of law by failing to properly apply contract law is also without merit. First, the opt-in form signed by Mr. Williams is not a contract. The opt-in form is an administrative record of Mr. Williams' voluntary consent to be evaluated under the PG& E system. Neither the

District, the CBA between the parties, nor common sense elevates the opt-in form from its status as an administrative document to a written contract.

Second, there are no reported appellate decisions in Washington to support Mr. Williams' conclusion that the hearing officer, the superior court, or the court of appeals should apply contract law to interpret his signed opt-in form or to interpret any portion of a statute. As correctly noted by the superior court, the doctrine of *Contra Proferentum* applies to contracts, not statutes. The superior court did not commit an error of law in this determination, let alone an obvious one.

Mr. Williams' claim that his opt-in to the PG& E system was invalid because his opt-in form was signed after October 15, 2010, is also specious. Appellant's Brief, pp. 7-8. As previously noted, the opt-in form was an administrative document utilized by the District to record Mr. Williams' request to be evaluated under the new system and nothing more. The opt-in form does not say, that the form is "not valid" after October 15, 2010.

Mr. Williams' claim that Principal Oatis testified that the PG& E teacher evaluation criteria were not fully adopted by the District in 2010 is misplaced. Principal Oatis testified that the phase-in of the PG& E system was not fully implemented in 2010, when Mr. Williams opted in and that the phase-in of all teachers to the PG& E evaluation system was complete

by the time of the hearing in 2013. *See* VP 54-56. Principal Oatis did not testify that evaluative “criterion” for the PG& E system was not fully implemented in 2010. *Id.*

J. Mr. Williams’ Third Assignment Of Error

Mr. Williams’ third assignment of error that the Hearing Officer committed an error of law when he failed to determine that Mr. Williams breached his promise to teach is also without merit. The law contains no such requirement. The Hearing Officer and the superior court were required to find as a matter of law that there was probable or sufficient cause to non-renew required by RCW 28A.405.210 and .310.

It is undisputed that failure to make sufficient progress during the probationary process is one method of proving sufficient cause to non-renew. *See* RCW 28A.405.100(4). It cannot be disputed that Mr. Williams failed to improve his teaching practice to proficient in all domains during his probation. These unchallenged facts are verities on appeal and support the decision of the superior court that the record demonstrates sufficient cause to non-renew Mr. Williams’s employment contract.

V. CONCLUSION

Mr. Williams failed to assign error to any action or ruling of the superior court. Consequently, the unchallenged findings of fact of the

superior court are verities on appeal and the only inquiry from this court is whether or not the unchallenged findings of fact support the superior court's conclusion of law that probable cause exists to non-renew Mr. Williams' employment contract.

The findings of fact of the superior court support its conclusion that there was probable cause to non-renew Mr. Williams' employment contract and therefore the superior court did not commit a clear error of law.

For these and all the above reasons, the court of appeals should affirm the decision of the superior court that there was probable cause to non-renew the employment contract of Mr. Williams.

RESPECTUFLY SUBMITTED this 21 day of July, 2014.



GREGORY E. JACKSON, WSBA #17541
JOHN R. NICHOLSON, WSBA #30499
Freimund Jackson & Tardif, PLLC
701 5TH Avenue, Suite 3545
Seattle, WA 98104
(206) 582-6001
Attorney for Respondent

DECLARATION OF SERVICE

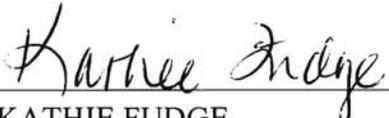
The undersigned declares under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

That on July 21st, 2014, I served the foregoing Brief of Respondent to the Court and to the parties to this action as follows:

Office of the Clerk Court of Appeals, Division I One Union Square 600 University Street Seattle, WA 98101-4170	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery
Harold H. Franklin, Jr., WSBA 20486 Attorney at Law 459 Seneca Avenue NW Renton, WA 98057 haroldfranklin1@comcast.net <i>Attorneys for Plaintiff</i>	<input checked="" type="checkbox"/> Email <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 21st day of July, 2014, at Seattle, Washington.



 KATHIE FUDGE