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No. 74260-4  
COURT OF APPEALS DIVISION I OF THE STATE OF  
WASHINGTON

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In the Matter of  
RHONDA MOEN

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RHONDA MOEN, a married individual,  
Respondent,

v.

NORTHWEST EDUCATIONAL SERVICE DISTRICT NO. 189,  
a municipal corporation,

Appellant.

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REPLY BRIEF OF RESPONDENT

*Resps Brief*

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Rodney R. Moody, WSBA # 17416  
Attorney for Respondent  
2825 Colby Ave., Ste. 302  
Everett, WA 98201  
(425) 740-2940

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**ORIGINAL**

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2 902 (2012); Pg. 18.  
3 *Scrivener v. Clark College*, 181 Wn.2d 439, 447, 334 P.3d 541 (2014); Pg.  
4 20.  
5 *Sneed v. Bama*, 80 Wn.App. 843, 849, 912 P.2d 1035 (1996); Pg. 18.  
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9 RCW 18.72.400; Pg. 14.  
10 RCW 28A.310.010; Pg. 9, 10.  
11 RCW 28A.320.125; Pg. 10, 13.  
12 RCW 28A.320.127; Pg. 10, 11, 13, 17.  
13 RCW 28A.320.1271; Pg. 4, 11, 12.  
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16 **RULES**

17 RAP 10.3; Pg. 8.

18 **STATEMENT OF FACTS**

19 Rhonda Moen was hired in October 2012 by the Northwest  
20 Educational Service District (NWESD), under the Prevention/Interviewing  
22 intervention Initiative grant (PRI) to present the Project Success  
23 curriculum in the Marysville Middle School. Moen Decl. ¶ 5, CP 35-36.  
24 This grant is federally funded and administered by the Washington State  
25

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1 Superintendent of Public Instruction. (OSPI) DesBiens Dep. Pg. 14, Ln.  
2 19-25, CP 47 Pg.17, Ln. 16-19, CP 48. Thomas Dep. Pg. 10, Ln. 22-25,  
3 CP 66. Project Success which Ms. Moen was hired to instruct is the  
4 curriculum piece of the grant which is funneled through the Department of  
5 Behavioral Health and Rehabilitation. DesBiens Dep. Pg. 14, Ln. 19-25,  
6 CP 47.  
7

8 As testified to by Jodie DesBiens, Project Success is the  
9 instructional curriculum part of a program which includes group meetings  
10 with students, a requirement to educate staff about drugs and alcohol,  
11 working on prevention activities through student clubs, and anything that  
12 is prosocial, positive engagement. DesBiens Dep. Pg. 20, Ln. 9-18, CP  
13 49. Project Success is required to be implemented with “best practices.”  
14 This is the program that has been chosen to be administered to the students  
15 to assist with understanding drugs and alcohol, life skills, positive  
16 behavior, and working with groups. DesBiens Dep. Pg. 20, Ln. 23-25, CP  
17 49. Best practices are also required by RCW 28A.320.1271.  
18

19 Project Success itself has four separate topics to be addressed.  
20 These include (1) being an adolescent, (2) alcohol, tobacco, and other  
22 drugs, (3) family problems and pressures, and (4) skills for coping.  
23 Moody Dec., Exhibit D(5), CP 95-96. As outlined in this exhibit there are  
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1 both goals and objectives associated with each of these topics which  
2 Project Success is designed to achieve and discuss.

3           Ultimately Ms. Moen declined to present the Project Success  
4 curriculum in the manner she was directed. This was because of the  
5 potential emotional impact to the students who due to the timing at the end  
6 of the school year would not have sufficient time or opportunity to process  
7 the emotional impact of the information presented. Moen Decl. ¶ 11, CP  
8 38.  
9

10           Ms. DesBiens, an employee of the NWESD, testified during her  
11 deposition regarding safety related issues of instructing Project Success in  
12 a manner other than with fidelity as instructed. She testified, “We don’t  
13 want to leave kids unable to get services because we had to make a shift  
14 because of a first or second semester’s class schedule.” DesBiens Dep.  
15 Pg. 35, Ln. 4-7, CP 53. Ms. DesBiens was asked “would there be concern  
16 if you opened up wounds the last week of school and there was no outlet  
17 or support.” Ms. DesBiens testified, “right”. “The program is gone in the  
18 summertime.” “They don’t have anybody to support them.” DesBiens  
19 Dep. Pg. 80, Ln. 9-10, CP 63. She further testified “many of the students  
20 that get the training, they just get the training or get the understanding and  
21 then go on and use it on their own.” “Then there are those kids that it  
22 opens up some wounds and they need some support.” “Yes, it would be in  
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1 these areas.” “Or even individually, meeting individually.” DesBiens  
2 Dep. Pg. 80, Ln. 13-18, CP 63. Ms. DesBiens was then asked whether it  
3 would be possible from her perspective given the timeframe to deliver this  
4 curriculum and not leave kids simply hanging as the summer approach.  
5 She testified, “yes.” “Not in its entirety, but I had said that several times.”  
6 “In some modified fashion, yes.” DesBiens Dep. Pg. 81, Ln. 1-3, CP 64.  
7

8 Ms. Moen ultimately met with her supervisors in late March 2013  
9 to discuss her concerns regarding the presentation of Project Success.  
10 Moen Decl. ¶ 11, CP 38. Ms. DesBiens during her deposition testified  
11 Ms. Moen appeared to be reluctant to teach Project Success and stated she  
12 was “burned out.” DesBiens Dep. Pg. 59, Ln. 20-25, CP 59. She also  
13 however testified that she had attended the two-day training with Ms.  
14 Moen earlier that year on how to present Project Success who at the time  
15 expressed no concern regarding her desire or ability to present this  
16 program. DesBiens Dep. Pg. 61, Ln. 1-8, CP 60.  
17

18 In late March 2013 Ms. Moen recognized that despite the  
19 numerous attempts to involve her supervisors in addressing the lack of  
20 cooperation from the school principal, Susan Hegeberg, including a  
21 meeting with Wendi Thomas and Ms. DesBiens she had not been  
22 successful in obtaining permission to instruct Project Success as she had  
23 herself been instructed. Moen Decl. ¶ 13, CP 39. She recognized that she  
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1 was still receiving no support from her supervisors regarding the  
2 implementation of this program. Moen Decl. ¶ 13, CP 39. In fact she was  
3 simply instructed by her supervisors to present the program as directed by  
4 Ms. Hegeberg because it was her school. Moen Decl. ¶ 10, CP 37-38.  
5 Ultimately on March 28, 2013, Ms. Hegeberg informed Ms. Moen that she  
6 would be able to present this class to 109 students at a time over a period  
7 of approximately 20 minutes each day. Moen Decl. ¶ 14, CP 39. This  
8 would not permit Ms. Moen to either present the curriculum in a manner  
9 which would be consistent with fidelity of the program or allow her to  
10 have the opportunity to assess the students in attendance because of the  
11 sheer number of students present. Finally, it would leave the students  
12 exposed to emotional harm if she were to attempt to present the  
13 curriculum of Project Success because the school year was ending,  
14 summer was approaching, and there would simply be insufficient time to  
15 meet the needs of the students. Moen Decl. ¶ 14, CP 39.

18 Under all the circumstances Ms. Moen determined that it was both  
19 unethical and potentially harmful to the students for her to present the  
20 program as she was directed by Ms. Hegeberg. This was because it would  
21 potentially raise harmful issues and then leave the students unsupported  
22 during the summer which was immediately approaching. With the  
23 complete lack of support from her supervisors at NWESD in conjunction  
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1 with the exposure of risk to the students Ms. Moen was unwilling to  
2 present the curriculum as directed and felt she had no alternative but to  
3 resign from her employment. Moen Decl. ¶ 12, CP 38.

## 4 ARGUMENT

### 5 WRONGFUL TERMINATION/PUBLIC POLICY

6  
7 The elements to establish the tort of wrongful discharge in  
8 violation of public policy are well-established. A plaintiff is required to  
9 demonstrate: (1) the existence of a “clear public policy” (“clarity”  
10 element), (2) whether “discouraging the conduct in which the employee  
11 engaged jeopardized the public policy” (“jeopardy” element), (3) whether  
12 the “public policy linked conduct caused the discharge” (“causation”  
13 element), and (4) whether the employer is “able to offer an overriding  
14 justification for the discharge” (“absence of justification” element). *Piehl*  
15 *v. The City of Federal Way*, 177 Wn.2d 604, 610, 306 P.3d 879 (2013).  
16

17 This Appellant has conceded the jeopardy, causation, and absence  
18 of justification elements. Only the clarity element remains at issue. The  
19 Appellant claims they have not conceded these elements, but they have  
20 failed to state an assignment of error regarding these elements or brief  
21 them. As one Court stated: “It is well settled that a party's failure to assign  
22 error to or provide argument and citation to authority in support of an  
23 assignment of error, as required under RAP 10.3, precludes appellate  
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1 consideration of an alleged error.” *Escude v. King County Pub. Hosp. Dist.*  
2 *No. 2*, 117 Wn. App. 183, 190 n. 4, 69 P.3d 895 (2003).

3           In *Hubbard v. Spokane County*, 146 Wn.2d 699, 50 P.3d 602  
4 (2002) the State Supreme Court stated, “the clarity element merely  
5 requires that the plaintiff establish a clear statement of public policy, not  
6 that the plaintiff demonstrate that the public policy was violated.” *Id.* at  
7 708-09; citing to *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 941,  
8 913 P.2d 377 (1996). In *Hubbard* the Appellate Court upheld the  
9 granting of summary judgment by the trial court and stated that even  
10 assuming chapter 42.23 contained a mandate of public policy, “the statute  
11 does not apply to the facts of this case.” *Id.* The Supreme Court reversed  
12 the Appellate Court and stated, “[a]s noted above, however, the clarity  
13 element *does not* require that a plaintiff demonstrate that the public policy  
14 was violated.” (Emphasis added) “Thus, the Court of Appeals need have  
15 decided only whether RCW 42.23.070(1) creates a valid public policy.”  
16 *Hubbard*, *Supra* at 709.

17           RCW 28A.310.010 has been argued to the Court for the purpose of  
18 showing that educational service districts such as NWESD are required to  
19 provide cooperative and informational services to local school districts  
20 and to assist the superintendent of public instruction and the state Board of  
21 Education in the performance of their respective statutory or constitutional  
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1 duties. RCW 28A.310.010 (1) (2). No argument has been made that this  
2 statute constitutes a public policy establishing the clarity element.

3 There are several statutes which do establish a relevant public  
4 policy and each of these individually satisfy the clarity element of this  
5 cause of action. These include 28A.320.127, 28A.320.1271, and  
6 28A.300.2851. Each of these statutes has been identified in all prior  
7 memorandums filed on behalf of Ms. Moen.  
8

9 RCW 28A.320.127(1) requires that beginning in the 2014–15  
10 school year, each school district must adopt a plan for recognition, initial  
11 screening, and response to emotional or behavioral distress in students,  
12 including but not limited to indicators of possible substance abuse,  
13 violence, and youth suicide. Each of these issues is specifically addressed  
14 by the Project Success curriculum. RCW 28A.320.127 (3) clearly states  
15 that the plan to be adopted under this statute may be a separate plan or a  
16 component of another district plan or *policy*, “such as the harassment,  
17 intimidation, and bullying prevention *policy* under RCW 28A.300.2851 or  
18 the comprehensive safe school plan required under RCW 28A.320.125.”  
19  
20 (Emphasis added)  
21  
22

23 Argument is made that RCW 28A.320.127(1) is not applicable  
24 because Ms. Moen resigned her position in April 2013 which of course  
25 precedes the 2014-15 school year. There is, however, nothing in this  
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1 statute which says that the policy regarding the adoption of such a plan is  
2 only applicable beginning in 2014. Further, RCW 28A.320.127(3) refers  
3 to the policy established by RCW 28A.300.2851 which itself in (4)  
4 requires the workgroup established to submit a biennial progress and  
5 status report to the governor and the education committees of the  
6 legislature beginning December 1, 2011. This of course does precede Ms.  
7 Moen's resignation in April 2013.  
8

9 RCW 28A.320.1271 requires the office of the superintendent of  
10 public instruction, which organizations such as the NWESD are required  
11 to support, to develop a model school district plan for recognition, initial  
12 screening in response to emotional or behavioral distress and students,  
13 "including but not limited to indicators of possible substance abuse,  
14 violence, and youth sought suicide." Further, the statute requires that the  
15 model plan "must incorporate research-based best practices," including  
16 practices and protocols used in schools and school districts and other  
17 states. This model plan was required to be posted by February 1, 2014.  
18 Once again, nothing in this statute states the policy established only begins  
19 on February 1, 2014, it merely requires that the model plan be posted by  
20 this date.  
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24 As previously stated, the indicators of "possible substance abuse,  
25 violence, and youth suicide" as well as the requirement for "research-  
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1 based best practices” are all components of Project Success. These  
2 statutes create public policies which require the superintendent of public  
3 instruction to address substance abuse, violence, and youth suicide.  
4 Project Success was a significant part of the plan to address these issues.

5  
6 Finally, RCW 28A.300.2851(1) requires the office of the  
7 superintendent of public instruction to convene a workgroup on school  
8 bullying and harassment prevention to “develop, recommend, and  
9 implement strategies to improve school climate and create respectful  
10 learning environments in all public schools in Washington.” RCW  
11 28A.300.2851 (1)(d) requires the office of the superintendent of public  
12 instruction to “Identify curriculum and best practices for incorporating  
13 instruction about mental health, youth suicide prevention, and prevention  
14 of bullying and harassment.” As previously stated, RCW 28A.300.2851  
15 (4) requires this workgroup to submit a biennial progress and status report  
16 to the governor and the education committees of the legislature beginning  
17 December 1, 2011.

18  
19 As was testified to by Ms. DesBiens, Project Success was required  
20 to be instructed with “best practices.” DesBiens Dep. Pg. 20, Ln. 23–25,  
21 CP 49. The requirement of research-based best practices is of course  
22 specifically required by RCW 28A.320.1271 and RCW 28A.300.2851 (d).  
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1           In addition to the statutes identified above, RCW 28A.320.125 (1)  
2 states; “The legislature considers it to be a matter of public safety for  
3 public schools and staff to have current school plans and procedures in  
4 place, fully consistent with federal law.” RCW 28A.320.125 (2) requires  
5 the schools and school districts to consider the guidance provided by the  
6 superintendent of public instruction. The same statute further requires  
7 each school district to adopt, no later than September 1, 2008, and  
8 implement a safe school plan consistent with school mapping information  
9 system pursuant to RCW 36.28A.060. School related safety issues are  
10 clearly identified as public policy in Washington.  
11

12           Argument is made that RCW 28A.300.2851 and RCW  
13 28A.320.125 were not argued before the Snohomish County Superior  
14 Court. Both of these statutes however are specifically identified in RCW  
15 28A.320.127 which was cited on behalf of Ms. Moen at both the trial court  
16 and before the Commissioner in response to the Appellant’s Motion for  
17 Discretionary Review. Therefore these statutes in fact were identified and  
18 argued at all levels.  
19

20           The Appellant cites to *Farnam v. CRISTA Ministries*, 116 Wn.2d  
21 659, 807 P.2d 830 (1991) in support of the argument that no public policy  
22 has been identified. The holding in *Farnam* is distinguishable however  
23 and does not support Appellant’s argument. In *Farnam* the employer was  
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1 authorized by law to remove the feeding tubes from terminally ill patients.  
2 Because the employer in that case acted legally in accordance with  
3 authority established by statute the Court held that the employee failed to  
4 state a claim for wrongful discharge in violation of public policy. Id.  
5 While the employer in *Farnam* enjoyed the lawful authority under the  
6 statutory scheme to act as it did, NWESD was not permitted by these  
7 statutes to act as it did.  
8

9 This Appellant also cites to *Dicomes v. State*, 113 Wn.2d 612, 782  
10 P.2d 1022 (1989) in support of its argument that because the NWESD did  
11 not act unlawfully Ms. Moen cannot establish the clarity element.  
12 *Dicomes* is also distinguishable because in that case the Court drew  
13 specific attention to the applicable clear legislative intent. The Court  
14 stated, “it is important to emphasize the clear legislative intent that it, the  
15 Legislature, retained ultimate control over the medical disciplinary  
16 account funds.” “The statute only authorizes the Director to allocate  
17 *appropriated* funds to accomplish the purpose of the law.” RCW  
18 18.72.400. *Dicomes*, supra at 623. (Emphasis in original) The Court  
19 obviously felt that it was a critical element that the Legislature retained  
20 ultimate control over these funds, not the employer.  
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1           The Legislature did not retain control over the plans identified  
2 above but instead directed the office of the superintendent of public  
3 instruction to develop these plans, which of course NWESD is statutorily  
4 required to assist. In *Dicomes*, the plaintiff as the Court noted was not  
5 confronted with the choice of violating a law or sacrificing her job. She  
6 was faced with the difference of opinion as to her superiors chosen course  
7 of action. *Id.* at 624. Ms. Moen, however, was faced with the choice of  
8 violating the public policies stated in these statutes and as a result placing  
9 her students at risk or sacrificing her job. Her resignation caused her  
10 personal financial harm.

11  
12           In *Rose v. Anderson Hay & Grain Co.*, 184 Wn.2d 268, 287, 358  
13 P.3d 1139 (2015), the Court discussed the four scenarios easily resolved  
14 under the *Thompson* framework that will potentially expose an employer  
15 to liability. These include: (1) when employees are fired for refusing to  
16 commit an illegal act, (2) where employees are fired for performing a  
17 public duty or obligation, such as having jury duty, (3) when employees  
18 are fired for exercising a legal right or privilege, such as filing workers  
19 compensation claims, and (4) where employees are fired in retaliation for  
20 reporting employer misconduct, i.e., whistleblowing. *Id.* at 287. This  
21 decision does not hold that these four scenarios are an exclusive list.  
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Rather, what is required is a scenario that can be easily resolved under the *Thompson* burden shifting analysis.

As the Appellant has argued, the Court in *Rose* stated, “Under each scenario, the plaintiff is required to identify the recognized public policy and demonstrate that the employer contravened that policy by terminating the employee.” *Id.* at. 276. In *Dicomes* the Court stated the focus should be on “whether the employer’s conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme.” *Dicomes*, *supra* at 617.

No case has held that these four scenarios are an exclusive list. This is a case where an employee was forced to quit her employment because she refused to commit an act which clearly contravened Washington statutorily created public policies. She refused as admitted by the employees of the NWESD to teach Project Success in a manner that would expose her students to potential harm.

The Appellant argues, “in this case, the key issue concerns the first, or clarity, element of a wrongful discharge in violation of a public policy claim: whether a clear and relevant public policy exists that requires the Project Success curriculum to be taught in the manner indicated by Ms. Moen and that requires the NWESD to support Ms. Moen in her disagreement with her building principal.” Appellant Br., Pg.

1 12. This argument demonstrates a fundamental misunderstanding of the  
2 legal standard applicable. This appeal involves a motion for summary  
3 judgment, not an argument regarding the standard of proof required at  
4 trial. Ms. Moen in response to a motion for summary judgment clearly  
5 *does not* need to prove that a relevant public policy exists that requires  
6 Project Success be taught in the manner she feels appropriate or that her  
7 employer support her in some dispute with the school principal. As has  
8 been clearly articulated in *Hubbard*, Ms. Moen need *merely* demonstrate  
9 the existence of a public policy; she *does not* need to prove in response to  
10 a motion for summary judgment that the public policy was violated.  
11 *Hubbard*, supra at 708-09. The Appellant has consistently, and  
12 incorrectly, argued the wrong legal standard.  
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15 Ms. Moen need merely establish that a validly recognized public  
16 policy exists. *Hubbard*, Supra at 708. She has done this. This Appellant  
17 has conceded the jeopardy, causation, and absence of justification  
18 elements. RCW 28A.320.127, 28A.320.1271, 28A.300.2851, and  
19 28A.320.125 all recognize and create several statutorily recognized  
20 expressions of Washington State public policy. Ms. Moen has more than  
21 amply demonstrated the clarity element required and a determination to  
22 the contrary is clear legal error.  
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### CONSTRUCTIVE DISCHARGE

A constructive discharge occurs where an employer deliberately makes the employee's working conditions intolerable, thereby forcing the employee to resign. *Sneed v. Bama*, 80 Wn.App. 843, 849, 912 P.2d 1035 (1996); *Short v. Battle Ground School District*, 169 Wn.App. 188, 206, 279 P.3d 902 (2012). Four elements must be established to support a claim of constructive discharge. These include (1) that the employer engaged in deliberate conduct which made the employees working conditions intolerable; (2) that a reasonable person in the employee's position would be forced to resign; (3) that the employee resigned solely because of the intolerable conditions; and (4) that the employee suffered damages. *Allstot v. Edwards*, 116 Wn.App. 424, 433, 65 P.3d 902 (2003); *Short*, supra at 206. Intolerable working conditions exist where employees are subjected to "aggravating circumstances or a continuous pattern of discriminatory treatment" on the part of the employer. *Allstot*, supra at 433. Whether working conditions have risen to an "intolerable" level is generally a factual question for the jury unless there is no competent evidence to establish a claim of constructive discharge. *Haubry v. Snow*, 106 Wn.App. 666, 677, 31 P.3d 1186 (2001).

Washington law presumes that a resignation from employment is voluntary and, thus, cannot give rise to a claim for constructive discharge.

1 *Townsend v. Walla Walla Sch. Dist.*, 147 Wn.App. 620, 627, 196 P.3d 748  
2 (2008). The employee may rebut the presumption "by showing the  
3 resignation was prompted by duress or an employer's repressive actions."  
4 *Id.* at 627-28. Mere subjective dissatisfaction is insufficient to overcome  
5 this presumption. *Id.* at 628.  
6

7 Ms. Moen did not resign this position because of her mere  
8 dissatisfaction with the actions of this Appellant. Ms. Moen resigned this  
9 position because despite significant effort on her part to bring to the  
10 attention of her employer her inability to teach the Project Success  
11 curriculum with fidelity in a manner which was safe for her students, her  
12 employer directed her to instruct this curriculum in a manner which was  
13 both contrary to her training and created a potential risk of harm to her  
14 students. In addition, Ms. DesBiens, Ms. Thomas, and Ms. Moen have all  
15 testified that instructing Project Success in the manner directed could  
16 potentially create a risk of harm to the students. Moen Decl. ¶ 11, CP 38.  
17

18 Argument is made that these actions are all the fault of Ms.  
19 Hegeberg so a claim of constructive discharge cannot be legally  
20 supported. This argument ignores the significant efforts made by Ms.  
21 Moen to address her concerns with her two supervisors who both ignored  
22 her concerns. While perhaps well intentioned, the actual effect of their  
23 efforts was to leave Ms. Moen with the choice of teaching Project Success  
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1 in an unethical and potentially harmful manner, or resign her job to her  
2 personal financial damage. Ms. Moen decided it was more important to  
3 protect the students and resigned her employment. This is as a result of  
4 the action, or actual lack of action, on Ms. DesBiens' and Ms. Thomas'  
5 part, not Ms. Hegeberg.  
6

7 When all of the facts are considered in the light most favorable to  
8 the non-moving party a determination that Ms. Moen was constructively  
9 discharged should survive a motion for summary judgment. Appellant's  
10 deliberate actions created an intolerable working environment for Ms.  
11 Moen. She was faced with the intolerable choice of protecting her  
12 employment or exposing her students to the risk of harm.  
13

14 To overcome summary judgment Ms. Moen has only a burden of  
15 *production*, not persuasion, and this may be proved through direct or  
16 circumstantial evidence. *Scrivener v. Clark College*, 181 Wn.2d 439, 447,  
17 334 P.3d 541 (2014). It also must be remembered that in ruling on a  
18 motion for summary judgment it is the duty of the trial court to consider  
19 all evidence and all reasonable inferences therefrom in the manner most  
20 favorable to the nonmoving party. *Meissner v. Simpson Timber Company*,  
21 69 Wn.2d 949, 951, 421 P.2d 674 (1966). Further, the trial court is not  
22 permitted to weigh the evidence presented, and summary judgment must  
23 be denied if a right of recovery is indicated under any provable set of  
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1 facts. *Smith v. Acme Paving Company*, 16 Wn.App. 389, 392, 559 P.2d  
2 811 (1976); *Fleming v. Smith*, 61 Wn.2d 181, 390 P.2d 990 (1964).

3 This Appellant is essentially asking this Court to weigh the  
4 evidence and determine as a matter of law that Ms. Moen cannot meet her  
5 burden at trial. That is of course contrary to established authority. When  
6 all inferences are considered in the light most favorable to Ms. Moen,  
7 particularly the admission by all parties that teaching Project Success in  
8 the manner directed could potentially cause harm to these children, Ms.  
9 Moen has met her burden of proof for the purposes of a motion for  
10 summary judgment.  
11

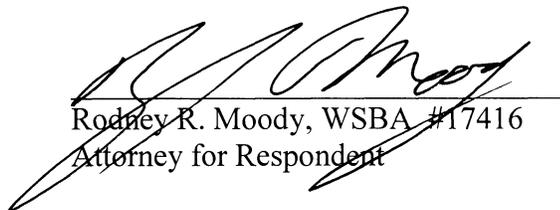
### 12 CONCLUSION

13 As outlined above a clear valid public policy exists under the  
14 statutes identified. Ms. Moen's burden at this point is merely to  
15 demonstrate that this public policy exists, not to demonstrate that it was  
16 violated. As a matter of law Ms. Moen has met her applicable burden and  
17 the Trial Court properly denied the Motion for Summary Judgment and  
18 the Motion for Reconsideration, and the Court of Appeals Commissioner  
19 erred in granting Appellant's Motion for Discretionary Review.  
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22 The ruling of Judge Okrent denying summary judgment should be  
23 upheld.  
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RESPECTFULLY SUBMITTED this 14 day of April, 2016.

  
Rodney R. Moody, WSBA #17416  
Attorney for Respondent

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**CERTIFICATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that on this 1<sup>st</sup> day of April, 2016, the foregoing was personally served on Vandeberg Johnson & Gandara including:

Counsel for Defendant  
William A. Coats  
Vandeberg Johnson & Gandara  
1201 Pacific Ave., Ste 1900  
P.O. Box 1315  
Tacoma, WA 98401

DATED this 1<sup>st</sup> day of April, 2016.

  
\_\_\_\_\_  
John R. Catanzaro  
Paralegal to Rodney R. Moody