

NO. 90031-1

SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES MCLAIN,

Respondent,

v.

KENT SCHOOL DISTRICT NO. 415,

Petitioner.

PETITIONER'S ANSWER
TO RESPONDENT'S PETITION FOR REVIEW

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I. IDENTITY OF THE PARTIES

Respondent James McLain petitions this Court for review of the Court of Appeals decision below. Petitioner Kent School District No. 415 asserts that the matter was correctly decided and asks this Court to deny any further review of that decision.

II. COURT OF APPEALS DECISION AT ISSUE

The Respondent seeks review of the Court of Appeals decision in *McLain v. Kent School District No. 415*, 178 Wash. App. 366, 314 P.3d 435 (2013). Respondent McLain also seeks review of the Court of Appeals' denial of his motion for reconsideration. *McLain v. Kent School District No. 415*, 2014 Wash. App. LEXIS 201 (January 27, 2014).

III. ISSUES PRESENTED

1. Where a public school teacher notifies a school district of his intent to appeal the nonrenewal of his contract pursuant to chapter 28A.405 RCW, but then abandons that administrative process for more than a year, did the Court of Appeals correctly decide that the teacher's failure to timely comply with the mandatory requirements and deadlines of the statutory procedure constituted a waiver of his right to this administrative appeal?
2. Did the Court of Appeals correctly decide that the superior court presiding judge acted without authority in appointing a hearing

officer pursuant to 28A.405.310 (4) where the teacher failed to comply with the mandatory statutory procedures and where there was no evidence that the parties had been “unable to agree” on a hearing officer?

IV. STATEMENT OF THE CASE

As the Court of Appeals noted, the facts of this case are undisputed. On February 23, 2010, the superintendent of the Kent School District (“the District”) notified teacher James McLain that his teaching contract would not be renewed for the next school year.¹ On March 1, an attorney for the Respondent notified the District that Respondent would be appealing the nonrenewal decision and counsel requested copies of the documents supporting the District’s decision. However, Respondent’s counsel notified the District in June that he was withdrawing from the case and sent a formal letter to that effect in July. No hearing officer had been nominated or selected by the parties for the appeal hearing. *McLain*, 178 Wash. App. at 369.

The District wrote the Respondent letters throughout July and August, 2010, reminding him that his teaching contract was going to end August 31 and notifying him that to continue the appeal of his nonrenewal either the Respondent or a legal representative on his behalf would need to contact the District to select a hearing officer. The District also informed the Respondent that if he simply disregarded the

¹ This notice was pursuant to the requirements of RCW 28A.405.210.

District's letter the right to a hearing would be deemed waived. *Id.* at 370-72.

Neither the Respondent nor an attorney on his behalf contacted the District during this time to select a hearing officer and begin the hearing process of RCW 28A.405.310.² The final letter for the District was sent to Respondent on August 19, 2010. Respondent did not reply to this notice. Respondent's teaching contract from the 2009-2010 school year expired on August 31, 2010. Respondent did not contact the District at any point during the 2010-2011 school year or before the beginning of the 2011-2012 school year. *Id.* at 372-73.

In November 2011—more than fifteen months after the District wrote the Respondent its last letter—an attorney contacted the District on the Respondent's behalf in an effort to pursue the Respondent's administrative appeal of the nonrenewal of his teaching contract following the 2009-2010 school year. The District notified the attorney that by failing to timely “follow through or appoint a designee to follow through with his hearing request” McLain had abandoned his right to a statutory hearing. *Id.* at 373.

On January 12, 2012, the Respondent filed a “Petition for Appointment of Hearing Officer Pursuant to RCW 28A.405.310 (4)” with the presiding judge of the King County Superior Court. Counsel for

² In August 2010 an attorney did contact the District on the Respondent's behalf, but when the District sought to clarify the scope of the attorney's representation, her office explained that their representation was limited to making a public records request on the Respondent's behalf. *McLain*, 178 Wash. App. at 371-72.

the Respondent asserted in a declaration that the parties had “been unable to agree on a hearing officer to conduct the hearing as required by statute.” *Id.* at 373. The District filed a motion to deny the petition and requested oral argument. The District argued that the Respondent had waived his right to an administrative hearing and denied that the parties had ever “failed to agree” on the hearing officer. *Id.* at 374.

Without oral argument, the presiding judge entered an order appointing a hearing officer and directing the parties to contact the hearing officer within ten days. The District filed for discretionary review of the order by the Court of Appeals, which was granted. *Id.* at 374.

In a published opinion, the Court of Appeals concluded that the Respondent waived his right to an administrative appeal under chapter 28A.405 RCW by failing to comply with the mandatory statutory requirements and deadlines. *Id.* at 379. The Court of Appeals also recognized that the parties did not “fail to agree” on the selection of a hearing officer under RCW 28A.405.310 (4), and therefore the superior court did not have the authority to appoint a hearing officer pursuant to that subsection. *Id.* at 377-78. The Court of Appeals reversed and vacated the order appointing a hearing officer. *Id.* at 380.

After the denial of his motion for reconsideration, the Respondent initiated this petition for review.

V. LEGAL ARGUMENT

A. The Court of Appeals correctly concluded that a teacher who does not comply with the statutory requirements and deadlines of RCW 28A.405.310 has waived his right to appeal the nonrenewal of his teaching contract.

The procedures of chapter 28A.405 RCW govern the discharge of a certificated public school teacher as well as the nonrenewal of a certificated public school teacher's professional services contract. When a teacher's contract is to be nonrenewed under RCW 28A.405.210 or the teacher is to be discharged under RCW 28A.405.300, a certificated teacher has the right to an opportunity for a hearing pursuant to RCW 28A.405.310.³

The Court of Appeals correctly suggested that the language of the RCW 28A.405.310 hearing procedure requires more of a teacher than simply initiating the appeal process. For example, within 15 days of receiving the request for an administrative hearing, the Court of Appeals pointed out that the teacher and the District must each designate a nominee to jointly agree to a hearing officer. *McLain*, 178 Wash. App. at 376-77 (citing RCW 28A.405.310). Only if the parties fail to agree in this process is a party then authorized to petition the superior court to appoint a hearing officer. RCW 28A.405.310 (4).

³ Before the Court of Appeals, and now in his petition for review, Respondent McLain repeatedly and inaccurately states that under chapter 28A.405 he "must be provided with a hearing prior to his contract with the District being adversely affected." Petition for Discretionary Review to the Washington Supreme Court, page 10. More precisely, the law requires that McLain be given the *opportunity* for a hearing. RCW 28A.405.310 (1). The Court of Appeals concluded that McLain waived this opportunity when he failed to comply with the requirements of the appeal process.

This selection of the hearing officer triggers the timelines for the remainder of the process. Within five days following the selection of the hearing officer, the hearing officer must convene a prehearing conference with the parties⁴ where the hearing officer can issue subpoenas as either party may request; authorize the taking of a prehearing deposition at the request of either party; and see to it that discovery is exchanged. RCW 28A.405.310 (5), (6). The hearing itself commences within ten days following the date of the prehearing conference.⁵

The teacher's obligation to participate in the hearing process is evident throughout this provision. Nothing in the statutory language suggests that the employee can simply absent himself from the process after he notifies the District of his intent to appeal, as the Respondent argues. The reason for this is common-sense: this process is the *employee's opportunity to be heard* regarding the nonrenewal of his teaching contract. This entire procedure has only one purpose, *i.e.*, it is the opportunity for a teacher to explain his reasons why the nonrenewal should not take place. It is meaningless to hold a hearing after an employee asserts his right to be heard where neither the employee nor the employee's representative attends. To conclude otherwise—as urged by McLain—would result in an absurd interpretation of the statute

⁴ This prehearing may also be held at a more convenient time as agreed to by the board of directors and the employee. RCW 28A.405.310 (5).

⁵ If the employee requests a continuance, the hearing officer is to give “due consideration” to such request. RCW 28A.405.310 (6) (d).

whereby an “opportunity for a hearing” before an independent hearing officer is transformed into a meaningless formality in which the District simply meets *ex parte* with a hearing officer in a teacher’s absence. This was clearly not the legislative intent when a public school teacher was afforded a statutory opportunity to challenge a district’s decision regarding a discharge or nonrenewal decision.⁶

The hearing officer process should not be relegated to an empty ritual that a school district must plod through alone—and pay for⁷—when a teacher is not interested in participating or being heard. Nor should a certificated teacher be allowed to initiate the appeal process, disappear for an extended period of time, and then reappear several years later and demand to follow through with the appeal hearing simply because the school district did not have an *ex parte* hearing in the teacher’s absence. These are the interpretations of RCW 28A.405.310 asserted by the Respondent. The Court of Appeals correctly rejected this approach and concluded that Respondent relinquished his right to a hearing by his protracted absence from the proceedings. Since the Respondent waived his right to a hearing, the Court of Appeals correctly held that the superior court presiding judge erred in appointing a hearing

⁶ The Court of Appeals correctly noted that when analyzing the interpretation and meaning of a statute, the “fundamental objective is to ascertain and carry out the intent of the legislature.” *McLain*, 178 Wash. App. at 375. Moreover, a statutory provision must be read in its entirety and within the context of the statutory scheme as a whole—the court must give meaning to every word and avoid an interpretation that would produce an unlikely, absurd, or strained result. *Id.*

⁷ A school district must pay all fees and expenses of any hearing officer. RCW 28A.405.310 (4).

officer to conduct the hearing.⁸ That order was properly reversed and vacated.

B. The Court of Appeals correctly held that the superior court is only authorized to appoint a hearing officer pursuant to RCW 28A.405.310 (4) when a school district and a teacher “fail to agree” on the joint selection of a hearing officer.

In the procedures for providing a public school teacher a hearing to contest his nonrenewal or discharge, RCW 28A.405.310 (4) contains the process for selecting an independent hearing officer. The parties must work jointly to select a mutually agreed-upon hearing officer. If they fail to agree on the selection of a hearing officer, either party may file a petition with the presiding judge of the superior court to appoint a hearing officer. Under the plain and unambiguous wording of the statute, however, this process is only triggered when the parties “fail to agree as to who should be appointed as the hearing officer.” *Id.*

The Court of Appeals correctly recognized that the presiding judge of the King County Superior Court erred in granting the Respondent’s petition to appoint a hearing officer in this case when the Respondent had abandoned the appeal process for more than a year. The Court of Appeals correctly noted that the District and the Respondent did not “fail to agree” on a hearing officer in this case—McLain’s protracted

⁸ Respondent McLain has asserted in the past that only a hearing officer should decide whether he had waived his right to a hearing, citing RCW 28A.405.310 (7). Subsection (7), however, merely authorizes the hearing officer to make rulings of law in connection with the hearing. This provision does not preclude a court from determining that a teacher has waived his opportunity to be heard or is otherwise not entitled to a chapter 28A.405 RCW appeal hearing.

failure to pursue his appeal was a waiver of that right and the District refused to re-engage the appeal process with him. The Respondent erroneously used subsection (4) of RCW 28A.405.310 to compel the District to participate in—and pay for—an administrative hearing to which the District rightfully believed the Respondent was not entitled.

The Respondent had other options when the District refused to grant him an opportunity for a hearing. For example, the Respondent could have sought a Writ of Mandamus under chapter 7.16 RCW compelling the District’s board of directors to participate in the hearing process. The plain language of 28A.405.310 (4), however, applies to a different situation and was the wrong mechanism for mandating that the District engage in a duty that did not exist. The Court of Appeals correctly found that the Respondent and the superior court presiding judge misused this procedure under the present facts.

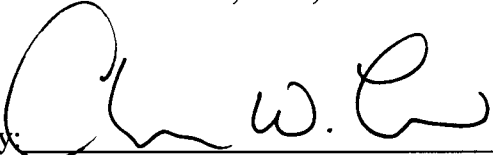
VI. CONCLUSION

For the reasons stated above, the Petitioner Kent School District asks this Court to deny the Respondent’s petition to review the Court of Appeals’ well-reasoned decision in this matter.

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RESPECTFULLY SUBMITTED this 26th day of March, 2014.

PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

By: 

Charles W. Lind, WSBA No. 19974
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District No. 415

CERTIFICATE OF MAILING

I hereby certify under penalty of perjury under the laws of the State of Washington that on March 20, 2014, I delivered via e-mail and legal messenger, a copy of Petitioner's Answer to Respondent's Petition for Review in this matter No. 90031-1, to the Washington State Supreme Court, and to Respondent's counsel, Douglas M. Wartelle, at the following address:

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Dated this 20 day of March, 2014, in Seattle, Washington.



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