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## 1. INTRODUCTION

The State has honed its argument down to a simple point – under RCW 72.40.028 (the "Pay Parity Statute") the State must pay Washington State School for the Blind ("WSSB") teachers salary equivalent to Vancouver School District ("VSD") teachers only when that salary is adjusted based upon background and experience.<sup>1</sup> According to the State, "The words "background and experience" modify the word "salaries" and the two terms mean that salary based on background and experience must be comparable among School and non-School teachers in the Vancouver School District." Brief of Respondents, p. 21. However, the State makes an error of elementary grammar. The phrase "employees of similar background and experience" is *not* a limitation on the type of salary that requires parity, rather it is a simple prepositional phrase which modifies the noun "employees." As such, that phrase limits which employees must be in parity – WSSB employees with a certain background and experience must have pay parity with those VSD employees of similar background

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<sup>1</sup> The remainder of the State's arguments are listed in its Response Brief; most with little or no discussion. All of these arguments were addressed in detail in Appellant's Opening Brief. Thus, this Reply focuses on the illogic of the only argument the State extensively elaborates on in its Response Brief.

and experience. The phrase does not limit the type of salary that similarly situated employees receive. Because the statute is plain and unambiguous, and because the State's and trial court's reading of the statute is clearly incorrect, this court should reverse the trial court's grant of summary judgment.

2. RCW 72.40.028 REQUIRES PAY PARITY BETWEEN TEACHERS AT WSSB AND TEACHERS AT VSD WITH SIMILAR BACKGROUNDS AND YEARS OF EXPERIENCE

Once again, this case requires a straightforward application of an unambiguous statute. RCW 72.40.028 requires that teachers receive a salary equivalent to that received by teachers in the Vancouver School District ("VSD"). This is known as the "pay parity" statute.

This case turns on this court's interpretation of RCW 72.40.028:

"All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the state board of education or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty." (Emphasis added)

The plain text of this statute is unambiguous as a matter of law.

The sole reasonable interpretation of RCW 72.40.028 is that teachers with similar backgrounds and experience at WSSB and VSD shall receive equal salary. Notably, the State has abandoned its original argument that TRI payments are not salary. Clearly, such a position is untenable. *See* Appellants Opening Brief, pp. 5-8. The State's primary argument against Delyria and Koch's plain language reading of this statute is now that this statute only requires parity of salary when that salary is contingent on background and experience. According to the State and the trial court, salary which is not based upon experience, but is rather paid equally to all employees, does not have to be matched at the State School.<sup>2</sup>

The State's interpretation leads to nonsensical results and undercuts the protections of the Pay Parity statute. Thus, under the State's interpretation, if the State Salary schedule were to be retooled to allow VSD to pay a flat salary to all of its employees, without consideration of background or experience, the state schools would have no obligation to

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<sup>2</sup> Specifically, the trial court held:

"The term 'salaries' is somewhat ambiguous, but my interpretation is that it meant a salary based upon one's similar background and experience, that is, having to do with the education and tenure or time in a particular position by teachers." CP 23 - 24.

match that salary. This is because that salary would no longer be based on background or experience. This reading of the statute is inconsistent with the language of the statute and is unreasonable. Such a reading defeats entirely the uncontested purpose of the statute, to ensure pay parity between the state schools and the school districts in which they are physically located.

The ordinary meaning of these terms is clear. First, "conform to and be contemporary with" means that the salaries should be as nearly the same as practicable. "Conform" means "To correspond in form or character; be similar." American Heritage Dictionary, 4th Edition; "contemporary" means: "Belonging to the same period of time." American Heritage Dictionary, 4th Edition. Therefore, salaries paid to VSD and WSSB teachers must correspond in form, character, and time. The plain meaning of this phrase is clear: WSSB teachers should be paid salaries which are the equivalent to VSD teachers, for the same period of time worked.

The State argues that the statute limits which types of salary must be matched. However, it is clear that where the legislature wants to define salary as only certain types of salaries, it does so explicitly. Other

Washington statutes make clear that the legislature will explicitly modify the term "salary" if the legislature does not intend to mean the full amount an individual is paid. For example, RCW 41.04.510 states that: "'Base monthly salary' for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay." *See* also RCW 41.54.010, which provides that: "'Base salary' . . . includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, non-money maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment."

If, as WSSB urged and the trial court held, the legislature intended "salary" in RCW 72.40.028 to refer to something less than its plain language definition, the legislature would have stated this specifically by modifying the term "salary." It did not and therefore, this court must apply the plain meaning of this statutory term.

Of course, the State argues that the legislature did "implicitly" limit

its definition of the term salary in RCW 72.40.028 to only salary based in some part on background or experience. However, this interpretation of the statute fails as a matter of elementary grammar. The State's explanation of its reasoning exposes the faults in its logic. Specifically, the State argues:

The word "salary" can be fully understood only in the context of the entire statutory clause, because to interpret the word otherwise would, contrary to a fundamental canon of construction, render the language "similar background and experience" superfluous. *The words "background and experience" modify the word "salaries" and the two terms mean that salary based on background and experience must be comparable among School and non-School teachers in the Vancouver School District.* Since TRI payments are not based on background and experience, the School complies with RCW 72.40.028 by using the salary schedule adopted by the Vancouver School District.

Respondent's Brief, p. 21.

This is the State's argument in a nutshell. But, the prepositional phrase "of similar background and experience" does not modify "salaries," it modifies "certificated employees." The State's argument turns, and fails, on a simple question of grammar. Once again, the full sentence is as follows:

*"Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated*

*employees of similar background and experience in the school district in which the program or facility is located."*

The purpose of the dependent adjectival prepositional phrase "of similar background and experience" is to modify the term immediately preceding it: "employees." Thus, certified employees of the two schools (WSSB and VSD) of similar background and experience should have conforming salaries.

Clearly, the phrase "of similar background and experience" does not modify salaries. First, under basic rules of grammar an adjectival prepositional phrase will follow right after the noun or pronoun that it modifies. *See e.g.* [www.dailygrammar.com/181to185.shtml](http://www.dailygrammar.com/181to185.shtml). Second, "salaries" do not have background or experience, "employees" do. In its brief the State asks this court to read into the statute the phrase "salaries based upon background or experience." Respondent's Brief, p. 21. But that language is not found in the statute.<sup>3</sup> Thus, the State's proposed interpretation of this sentence is nonsensical and contrary to basic notions

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<sup>3</sup> A useful exercise for the court may be to substitute the subject matter and to simplify this sentence. For instance, a parallel sentence might read: "meals for all dogs shall be the same as meals for all cats of similar age and weight." Clearly, no one would argue that only meals determined by age and weight should be equal, while meals not based on age and weight would be unrestricted. Thus, the State's argument fails as a matter of simple logic.

of elementary grammar.

The State suggests that to read the phrase "of similar background and experience" as modifying "certificated employees" would render that language superfluous. This is not true. Without that limitation, there would be no clear way of establishing which employees' salaries must be in parity. Under appellants' plain language reading of this statute, this phrase explains what attributes of certificated employees can be taken into account in differentiating between employees within the school.<sup>4</sup> In other words, that language prevents a first year teacher at WSSB from claiming that this statute entitled him to the pay of a twenty year veteran at VSD. It is apparent that the Delyria and Koch's interpretation does not render this phrase superfluous.

### 3. CONCLUSION

The plain language of RCW 28A.400.200(4) (providing for TRI salary for school district employees) and RCW 72.40.028 (providing for

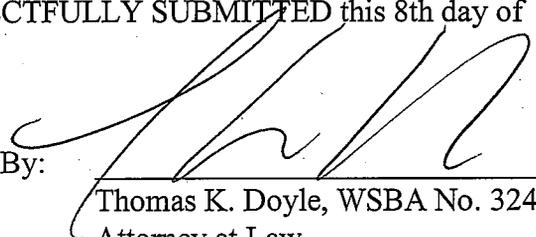
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<sup>4</sup> The import of this phrase can be seen by simply removing it from the sentence: "Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees . . . in the school district in which the program or facility is located." Without the prepositional phrase "of similar background and experience" there would be significant ambiguity as to whether the VSD differentiation of teachers based upon experience and background would apply to WSSB teachers.

WSSB employees to receive salary equal to VSD employees) require that Delyria and Koch receive an equivalent to VSD TRI salary. This interpretation makes sense, gives effect to all words in the sentence, and unlike the State's interpretation, does not insert new words or rewrite the statute. For these reasons, and those set forth in their Opening Brief, this court should reverse the trial court's decision and remand this matter with the direction that the court grant Plaintiffs' Motion for Partial Summary Judgment.

RESPECTFULLY SUBMITTED this 8th day of  
September, 2005.

By:



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing REPLY BRIEF upon the following person at the following address:

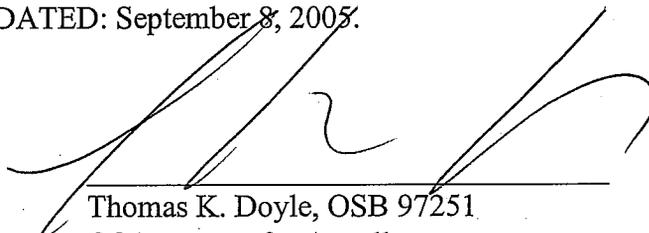
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DATED: September 8, 2005.

  
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