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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FEDERAL WAY SCHOOL DISTRICT NO. 210,

Respondent,

v.

DAVID VINSON,

Petitioner.

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FEDERAL WAY SCHOOL DISTRICT'S ANSWER
TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Petitioner David Vinson seeks review of the Court of Appeals decision issued on January 25, 2010 (hereinafter "*Vinson* opinion"). The present case posed a singular question regarding RCW 28A.405.300: whether, as a matter of law, a teacher's complete dishonesty in the course of a formal investigation constituted sufficient cause for discharge from employment. The petition should be denied because the *Vinson* opinion applies this Court's well-settled law from *Hoagland v. Mount Vernon School District*, 95 Wn.2d 424, 623 P.2d 1156 (1981), and *Clarke v. Shoreline School District*, 106 Wn.2d 102, 720 P.2d 793 (1986), regarding what constitutes sufficient cause for dismissal under RCW 28A.405.300. Moreover, the *Vinson* opinion does not create a conflict between the divisions of the Court of Appeals, and in fact is consistent with Division III's resolution of a similar issue in *Weems v. North Franklin Sch. Dist.*, 109 Wn. App. 767, 776, 37 P.3d 354 (2002). Despite the Petitioner's vague claims that the *Vinson* decision creates confusion and conflict with this Court's prior decisions, the opinion is squarely situated within long-standing case law, including *Clarke's* plain language.

Second, this Court should deny the petitioner's request to review the Court of Appeal's application of *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), which held that a school district may obtain review of a hearing officer's decision on a writ of review. Review of this issue is not warranted. Both cases are more than 25 years old, this Court previously denied review of the issue, the *Vinson* opinion is consistent between Divisions, and Vinson's petition is merely an unjustified belated attack on long-standing precedent.

This case concerns nothing more than a teacher lying during the course of a formal investigation about the very substance of that investigation. By its very own terms, the holding of the *Vinson* opinion is fact-specific regarding dishonesty by a certified teacher in the course of a formal school district investigation. The case raises no broader issues of general public importance, and therefore is inappropriate for review by the Supreme Court.

II. COUNTER STATEMENT OF THE CASE

On July 5, 2007, the Federal Way School District notified David Vinson, a certificated teacher, of probable cause for his discharge. Ex. 15. Pursuant to RCW 28A.405.310, Hearing Officer John Cooper held a hearing to review the cause for discharge.

A. The record before Hearing Officer Cooper.

The following facts are established by the record from the hearing before the Hearing Officer and, except where specifically noted, are uncontested.

1. Vinson verbally assaulted Rebecca Nistran leading to the investigation at issue here.

On May 1, 2007, Rebecca Nistran stopped for something to eat at a Taco Time restaurant in Federal Way, before heading next door for her shift as a waitress at Red Lobster. As she got in line, she recognized the man in front of her as David Vinson. She had known Vinson from her time as a student at Thomas Jefferson High School ("TJHS"), where he had been her junior year English teacher. (She also recalled that in 2005, she had participated in a District investigation of Vinson, Trans. 10, but she did not know whether Mr. Vinson knew about her involvement in that investigation, Trans. 26.)

Vinson turned around and saw Nistran, and Nistran said something to him. Nistran testified that she simply said, "hi." Trans. 11. Vinson claims that, rather than simply saying "hi," Nistran asked, "Why aren't you at TJ?" a reference to his having been transferred to Federal Way High School following the investigation in which Nistran had participated. Trans. 408. He testified that he "heard what I wanted to hear," which was, "Why aren't you at TJ, faggot?" Trans. 412. Vinson is openly gay, and claims

that Nistrrian had previously called him a "faggot." Trans. 370. Nistrrian denies this. Trans. 17. In any event, it is clear that Nistrrian did *not* use that offensive term in addressing Vinson at the Taco Time. She said either, "hi," or "Why aren't you at TJ?"

In response to Nistrrian's comment, Vinson launched into a vicious verbal assault directed at Nistrrian. He does not dispute that he said words to the effect of, "stay the fuck away from me," and "you know what you and your brother did." Trans. 408 (admitting saying, "don't talk to me . . . you fucking bitch"). (The investigation that Nistrrian (and her brother, Trans. 39) participated in resulted in Vinson's being involuntarily transferred from TJHS to FWHS. Trans. 210.) Nistrrian testified, and Mr. Vinson did not deny, that Mr. Vinson also called her names including "slut," "tramp," "whore," "bitch" and "hussy." Trans. 12; Trans. 408 (admitting calling her a "bitch" and a "whore").

Vinson also threatened to further harass Ms. Nistrrian. Looking down at her Red Lobster name tag, Vinson declared that he was going to go to Red Lobster, insist that she wait on him, and "raise hell." Trans. 13, 446. Vinson's verbal assault against Nistrrian occurred in front of children. Trans. 409.¹

¹ It is also probable that Vinson was accompanied by students. While he denies it, Nistrrian testified that he was with students, buying them food. Trans. 12. Moreover, Vinson's friend, Tommy Decker, testified that Vinson had told him, on the afternoon of

In the course of the previous investigation in which Nistran had participated—and which led to Vinson’s involuntary transfer—Vinson was clearly and repeatedly directed not to engage in any form of retaliation against anyone who had participated in that investigation. Trans. 57; Ex. 3 at 3 (“[Y]ou are directed to refrain from retaliation or reprisal against individuals that participated in the investigation process. Any future harassment, retaliation or reprisals on your part may be cause for further discipline, up to and including termination of employment with the District.”).

2. **The record establishes with certainty that Vinson repeatedly lied during the course of the District’s subsequent investigation.**

Shortly after the incident at Taco Time, Nistran reported it to the District. Trans. 40, 210-11. Courtney Wood was assigned to conduct an investigation of Nistran’s complaint. Trans. 211. The evidence establishes that Vinson knew who Wood was. Trans. 386. Vinson was obligated to tell the truth in response to Wood’s questions. District Superintendent Tom Murphy testified that, in conducting an investigation, Wood acts under Murphy’s authority. Trans. 301. Wood has the authority to demand full and honest answers to his investigative questions. *Id.*

the event, that he had taken students who had been working in his classroom after school for food. Trans. 198. While Vinson admitted a number of lies told during the course of the investigation, he never admitted that students accompanied him. The reason seems

Wood interviewed Vinson regarding the Taco Time incident on May 22, 2007. Trans. 48. Despite having been investigated and interviewed by Wood on at least one prior occasion, Vinson disregarded Wood's authority to require honest answers; Vinson admits that he chose to lie. Trans. 435. Among his numerous lies to Wood that day were the following:

- In response to Wood's asking whether he had had any recent contact with Nistran, Vinson replied that he had not. Trans. 53. By Vinson's own admissions during the hearing, this was a lie. Trans. 408.
- Wood asked if Vinson had had a verbal interaction with Nistran at the Taco Time. Vinson claimed that he had not. Trans. 53. By Vinson's own admissions during the hearing, this was a lie. Trans. 408.
- Wood asked Vinson if he had told Nistran that he wanted to find out where she worked so he could go there and raise hell. As he attempted to do during the hearing, Vinson lied, saying he had not. Trans. 54. Only after lying in response to District counsel's questions on cross-examination, Trans. 437, did Vinson admit this threat, when the Hearing Officer reminded him that two of his friends had testified that he admitted the threat to them shortly after the incident, Trans. 446.

plain: If he had, the District could have identified them, and they could have told the hearing officer exactly what happened at the Taco Time.

- Wood asked if Vinson had been at the Taco Time in question *at any time*. Incredibly, Vinson claimed that he had not. Trans. 54. By Vinson's own admissions during the hearing, this was a lie. Trans. 407.
- Wood asked Vinson if he had called Nistriian names such as "whore" or "bitch". He said no. Trans. 54. By Vinson's own admissions during the hearing, this was a lie. Trans. 408.
- Wood asked Vinson if there were any witnesses he could provide who could corroborate his answers. His response: "I already told you I wasn't there. How can there be any witnesses if I wasn't there?" Trans. 55-56. Obviously, that was a lie.

Wood gave Vinson every opportunity to respond to Nistriian's allegations about the Taco Time incident. He reviewed Vinson's answers to these and other questions with him at the end of the interview. Trans. 56. Vinson made no corrections other than to say he had seen Nistriian in a park and that that was the last time he had seen her (a demonstrated lie). Trans. 56. Wood even implored the president of Vinson's union, Shannon Rasmussen, to provide any alibi, witnesses or other information; she never did. *Id.*

Vinson told these lies on May 22, 2007. Not until his testimony on November 28, 2007—six months later, and faced with the testimony of friends to whom he had admitted his conduct—did Vinson come clean.

Faced with the unassailable testimony of his own friends to paint him as dishonest, Vinson could do nothing but admit it.

Vinson characterizes his conduct during the investigation as stonewalling and dissembling. But, neither of these terms accurately reflects the record, which contains uncontroverted evidence that Vinson lied to Wood, a District investigator. Moreover, his lies were substantive, going to the heart of the allegations the District reasonably undertook to investigate.

B. The Hearing Officer's decision.

On January 8, 2008, the Hearing Officer concluded that the District did not possess sufficient cause to discharge Vinson. The Hearing Officer applied the *Hoagland* factors to conclude that while Vinson's conduct was indeed inappropriate, "troubling and should never have occurred," CP 35, "the conduct complained of on the part of Mr. Vinson has not been shown to have had, or is likely to have, an impact upon his teaching effectiveness or performance." CP 36.

C. Superior Court review.

The District sought review of the hearing officer's decision in superior court pursuant to RCW 7.16.030, CP 1, and a Writ of Review was issued on February 15, 2008, CP 90. On May 13, 2008, the superior court affirmed the Hearing Officer's decision, finding that the District "failed to meet the requirements for a grant of statutory certiorari." CP 224. The

superior court also awarded Vinson reasonable attorney's fees of \$38,773.67. *Id.* The District timely appealed. CP 226.

D. Court of Appeals' decision.

On review before Division I of the Court of Appeals, the District prevailed. The Court's January 25, 2010, opinion held that as a matter of law, dishonesty by a certified teacher in the course of an official school district investigation lacks any professional purpose and is sufficient cause for termination under RCW 28A.405.300. In reaching this conclusion, the Court explained that because the misconduct took place "at work, on work time, and in violation of his duties as a district employee to cooperate with the investigation of other alleged misconduct, the admitted dishonesty during the investigation does not require the application of the *Hoagland* factors." Therefore, the Court concluded that under *Clarke v. Shoreline Sch. Dist. No. 412*, 106 Wn.2d 102, 113-14, 720 P.2d 793 (1986), Vinson's conduct was improper and lacked any professional purpose and constituted sufficient cause for termination. Because the Hearing Officer committed an error of law by applying the *Hoagland* factors, the Superior Court abused its discretion in denying the statutory writ, RCW 7.16.040. The Court reversed the denial of the writ and vacated the order affirming the Hearing Officer. The Court remanded for the Superior Court to enter an order reversing the Hearing Officer.

III. ARGUMENT

A. **Vinson fails to establish that review is warranted under RAP 13.4.**

RAP 13.4 mandates that a petition for review will be accepted by the Supreme Court only:

(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.

Vinson requests review under RAP 13.4(1), (2), and (4), but review is inappropriate under these prongs.

B. **The Court of Appeals decision does not conflict with any Supreme Court or other Court of Appeals decisions.**

First, the Petitioner vaguely claims that the *Vinson* opinion fails to follow the holding of *Clarke* and *Hoagland*. Vinson asserts that the Court of Appeals decision generates confusion about the applicability of the *Hoagland* factors and creates a strict liability standard for certified teachers. Review is inappropriate because the Petitioner's claimed errors mischaracterize both case law and the narrow holding of the *Vinson* opinion.

In 1986, in *Clarke*, the Supreme Court reviewed various appellate court decisions interpreting the term "sufficient cause," and articulated the

following comprehensive rule:

Read together, the general rule emanating from Washington case law is this: Sufficient cause for a teacher's discharge exists as a matter of law where the teacher's deficiency is unremediable and (1) materially and substantially affects the teacher's performance, [*Hoagland v. Mount Vernon School District*, 95 Wn.2d 424, 623 P.2d 1156 (1981); *Mott v. Endicott School District*, 105 Wn.2d 199, 713 P.2d 98 (1986)]; or (2) lacks any positive educational aspect or legitimate professional purpose. [*Pryse v. Yakima Sch. Dist.*, 30 Wn. App. 16, 632 P.2d 60 (1981); *Potter v. Kalama Public Sch. Dist.*, 31 Wn. App. 838, 644 P.2d 1229 (1982)]. In such cases, the teacher is deemed to have materially breached his promise to teach, [*Barnes v. Seattle School District*, 88 Wn.2d 483, 487, 563 P.2d 199 (1977); *Simmons v. Vancouver Sch. Dist.*, 41 Wn. App. 365, 378, 704 P.2d 648 (1985)] and can be discharged without compliance with the probation procedures of RCW 28A.67.065 [recodified as RCW 28A.405.100].

Clarke v. Shoreline Sch. Dist., 106 Wn.2d 102, 113-14, 720 P.2d 793 (1986).

In *Clarke*, the Shoreline School District sought to discharge from employment a teacher who was legally blind and suffered from a hearing impairment because he constituted a "hazard to the welfare and safety of students." *Id.* at 108. The Court noted that a "common thread running through many Washington cases is a concern for the health, safety, and welfare of the students." *Id.* at 114. To these ends, "this court [in *Hoagland*] enunciated eight factors for consideration in teacher discharge cases because 'they are obviously relevant to any determination of TEACHER EFFECTIVENESS, the touchstone for all dismissals.'" *Id.* (emphasis in original). But, "these factors are not necessarily applicable when the cause

for dismissal is the teacher's improper performance of the duties." *Id.*

The rule announced in *Clarke* "presumes a nexus between the conduct in question and the employee's job performance." *Ruchert v. Freeman Sch. Dist.*, 106 Wn. App. 203, 22 P.3d 841 (2001) (holding that, in termination of a bus driver for hosting a party at which minors were served alcohol, trier of fact must consider whether that conduct had a nexus to the employee's job performance). As explained in *Ruchert*, the factors set forth in *Hoagland v. Mt. Vernon Sch. Dist.*, 95 Wn.2d 424, 623 P.2d 1156 (1981), inform that analysis:

[T]he *Hoagland* factors must be considered when evaluating the job-relatedness of a school employee's alleged misconduct. After adopting the rule for examining job-related "deficiencies," the *Clarke* court listed the *Hoagland* factors and made two observations:

First, not all eight factors will be applicable in every teacher discharge case. Second, these factors are not necessarily applicable when the cause for dismissal is the teacher's improper performance of his duties. They were designed to ensure that "when a teacher's status or conduct outside his profession is the basis for his dismissal, that cause is related to his performance of his duties as a teacher." Nevertheless, these factors are helpful in determining whether a teacher's effectiveness is impaired by his classroom deficiencies.

Clarke, 106 Wn.2d at 114-15 (citations omitted). Similarly, the *Sauter* court [*Sauter v. Mt. Vernon Sch. Dist.*, 58 Wn. App. 121, 130-131, 791 P.2d 549 (1990)] reasoned that the *Hoagland* factors were inapplicable because "we are not faced with conduct involving a teacher's private life unrelated to school activities." *Sauter*, 58 Wn. App. at 132. As Division One of this court explained again in a later case:

Because the eight *Hoagland* factors are designed to assure [sic] that, when a teacher's status or conduct outside his profession is the basis for his dismissal, that cause is related to his performance of his duties as a teacher, *Hoagland*, 95 Wn.2d at 428, those factors are not necessarily applicable when the cause for dismissal is the teacher's improper performance of his duties.

Simmons v. Vancouver Sch. Dist. No. 37, 41 Wn. App. 365, 378-79, 704 P.2d 648 (1985).

We conclude that different standards apply based on whether the cause for dismissal relates to the employee's job performance or whether the discharge is based on the employee's status or conduct outside these duties. When the cause for dismissal is based on the employee's job performance, either one or both of the *Clarke* tests may apply. But application of these tests may or may not require consideration of some or all of the *Hoagland* factors. In contrast, when a school district employee's status or conduct outside his or her job duties is the basis for discharge, the *Hoagland* factors must be considered along with the second *Clarke* test.

Ruchert, 106 Wn. App. 212-13. This Court denied review of *Ruchert v. Freeman School Dist.*, 145 Wn.2d 1005, 35 P.3d 381 (2001).

Here, the misconduct directly pertained to Vinson's employment obligation to truthfully participate in a formal school district investigation. Because the misconduct occurred at work and in the performance of Vinson's duties as a public employee, settled and uncontroverted precedent makes clear that it was error for the Hearing Officer to apply the *Hoagland* factors.

Second, the Petitioner argues that the Court of Appeals erred in not requiring the District to show that Vinson's conduct was unremediable. Pet. Rev. at 11. Vinson never raised the issue of whether the District had to

prove that the misconduct was remediable in any of his briefing to either the trial court or the Court of Appeals. RAP 2.5(a)(3) precludes review of issues raised for the first time on appeal, unless it amounts to “manifest error affecting a constitutional right.” There is no such right affected here.

Moreover, the Court of Appeals addressed the remediability aspect of the *Clarke* test in a manner consistent with all other appellate courts that have addressed the issue. Every court of appeals decision examining the issue of remediability following *Clarke* has concluded that the “unremediable” requirement stated in *Clarke* applies only to the first prong of the test, related to performance deficiencies. *Sauter v. Mt. Vernon Sch. Dist.*, 58 Wn. App. 121, 130-131, 791 P.2d 549 (1990); *Wright v. Mead Sch. Dist.*, 87 Wn. App. 624, 630-31, 944 P.2d 1 (1997) (“*Sauter* is correct. . . . The statute requiring probation is not applicable in situations where the conduct lacks a positive educational aspect or legitimate professional purpose.”); *Ruchert v. Freeman Sch. Dist.*, 106 Wn. App. 203, 210-11, 22 P.3d 841 (2001) (following *Sauter*); *Weems v. North Franklin Sch. Dist.*, 109 Wn. App. 767, 776, 37 P.3d 354 (2002) (“Remediability is a consideration only when the discharge follows deficient performance. That is, some professional shortcoming that can be remedied with training, more work, or other instruction Remediability need not be considered when the teacher’s conduct lacks any positive educational aspect or legitimate

professional purpose.”). Because Vinson’s termination was based on willful misconduct, the remediability element of *Clarke*’s first prong is not applicable.

Third, Vinson asserts that the Court of Appeals holding creates a *per se* rule of discharge for any minor school-day misconduct, regardless of the conduct or its context. Pet. Rev. at 15. This is an obvious exaggeration of the holding. By its terms, the Court of Appeals holding applies only to the narrow circumstance of “lying during the course of an official investigation of professional misconduct.” *Vinson* at 10. Moreover, in footnote 9, the Court explicitly declined to broaden the holding beyond the facts presented by this case: “While we hold that lying during the course of the investigation is sufficient cause for termination, our holding stems from the application of the *Clarke* test to the facts before us.” *Id.* at n.9. There is no merit to Vinson’s claimed error that the Court of Appeals set up any *per se* rule extending beyond the facts in this case.

Vinson also claims that the Court of Appeals erred in granting the School District’s writ of review because under RCW 28A.405.340 only a teacher has the right to appeal a hearing officer’s decision. Pet. Rev. at 16. The issue of writs of review in the context of a certificated employee discharge hearing has already been decided in at least two reported decisions. In *Kelso Sch. Dist. v. Howell*, 27 Wn. App. 698, 621 P.2d 162

(1980), Division II of the Court of Appeals held that the decision of a hearing officer in such a case may be reversed on writ of review if “the officer is found to have violated constitutional principles, exceeded his statutory jurisdiction, or committed *clear error of law*, or his decision is found to be *arbitrary and capricious*.” *Id.* at 701 (emphasis added). Subsequently, in *Coupeville Sch. Dist. v. Vivian*, 36 Wn. App. 728, 677 P.2d 192 (1984), Division I followed Division II’s decision in *Howell*, by granting a school district’s writ of review regarding a hearing officer’s decision pursuant to RCW 28A.405.310, and held that the hearing officer erred as a matter of law when he concluded that sufficient cause did not exist. This Court declined to review *Coupeville*, 101 Wn.2d 1018 (1984). Vinson offers no reason why, 30 years after *Kelso* and 26 years since *Coupeville*, review is now warranted.

More notably, this Court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision. *Soproni v. Polygon Apartment Partners*, 137 Wash.2d 319, 327 n.3, 971 P.2d 500 (1999); *City of Federal Way v. Koenig*, 217 P.3d 1172 (2009). By not modifying or clarifying the issue of school district appeals of hearing officers’ decisions, the legislature

has implicitly assented to the holdings in *Kelso* and *Coupeville*. In light of this legislative acquiescence, review is inappropriate and unnecessary.

Despite this Court's prior denial of review on this issue and legislative acquiescence to the 30 year old *Kelso* decision, Vinson claims that *Bates v. Board of Industrial Insurance Appeals*, 51 Wn.2d 125, 316 P.2d 467 (1957), required denial of the writ of review. At issue in *Bates* was whether the Department of Industrial Insurance may obtain a writ of certiorari in order for the superior court to review a decision by the Insurance Appeals Board. *Id.* *Bates* involved the Industrial Insurance Act ("IIA"), a wholly different statutory scheme than the one present here. The IIA explicitly abolished "all jurisdiction [of courts] over such causes." *Bates*, 51 Wn.2d at

128. Moreover, the *Bates* court noted the far reaching nature of the IIA:

The only jurisdiction of the superior court since 1911 over such matters (all phases of master and servant liability for personal injuries) is limited to appeals from the orders of the joint board and, since 1949, from the orders of the board of industrial insurance appeals, when such appeals have been taken in strict accordance with the applicable provisions of the workmen's compensation act.

Id. at 128-29. Given this unique statutory scheme, the application of *Bates* has been generally restricted to cases involving Title 51 RCW.

Unlike the IIA, Chapter 28A.405 RCW is not a sweeping statute that abolishes the jurisdiction of superior courts regarding claims arising from the discharge of certified employees from school districts. For

example, an employee may bring a cause of action under Chapter 49.60 RCW for discrimination or retaliation. Because of these statutory differences and the legislature's acquiescence to the *Kelso* and *Coupeville* decisions interpreting RCW 28A.405.340 and RCW 7.16.040, *Bates* does not require reversal and review should be denied.

Last, the Petitioner challenges the Court of Appeals' application of the standard of review. The *Vinson* opinion explained the proper standard of review:

The basis for granting the statutory writ is established in RCW 7.16.040:

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

Commanda v. Cary, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001). The superior court's decision to issue a writ is reviewed for an abuse of discretion. *See, id.* at 654-57. 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). Issues of fact are reviewed to determine whether they are supported by competent and substantial evidence. RCW 7.16.120(4); *Sunderland*, 127 Wn.2d at 788.

Vinson contends that the Court of Appeals should have applied an arbitrary and capricious standard of review because the application of the

Hoagland factors is discretionary. Pet. Rev. at 18. No authority supports this claimed error. Further, Vinson failed to preserve this claimed error when he did not raise it below. Review is consequently precluded by RAP 2.5(a)(3).

Moreover, *Coupeville School District* is dispositive. In *Coupeville*, the Court of Appeals applied the standards set forth in RCW 7.16.120 and *Kelso*—in particular, the “clear error of law” and “arbitrary and capricious” standards—to overturn the decision of a hearing officer who concluded that the employee’s demonstrated misconduct (including allowing students to consume alcohol in his home) would not impact his teaching performance and therefore did not constitute sufficient cause for discharge. “If the hearing officer finds as the ultimate fact that Vivian’s conduct has not materially and substantially affected his performance and the evidence is not only overwhelmingly to the contrary but positively establishes that his performance is affected, then *as a matter of law* the decision of the officer is *an error of law* as well as arbitrary and capricious.” *Id.* at 738-39 (emphasis added). The application of the law—including the *Hoagland* factors—to the facts is therefore a question of law reviewable under the “error of law” standard. The *Vinson* opinion applied the correct standard of review. This Court’s review of the issues is therefore unnecessary and inappropriate.

C. The Petition does not present any issues of substantial public interest suitable for consideration by the Supreme Court.

Although Vinson cites RAP 13.4(b)(4), he provides no reason why this case is of substantial public importance and warrants review by the Court. On the contrary, the issues presented by this appeal turn on the specific facts of the case—the unique circumstance of a certified teacher lying in the course of an investigation into professional misconduct. The Court of Appeals merely applied the *Clarke* test to these unique facts, reaching the obvious and hardly-controversial conclusion that this conduct warrants discharge. Given the limited scope of the opinion, no issues of substantial public importance are present and review on these grounds is inappropriate.

IV. CONCLUSION

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

RESPECTFULLY SUBMITTED this 25th day of March, 2010.

DIONNE & RORICK



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

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the Federal Way School District's Answer to Petition for Discretionary

Review to the following:

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

Dated this 25th day of March 2010.


By: Cynthia Nelson

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

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

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Thank you.

Cynthia Nelson
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| | |
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