

66312-7

66312-7

No. 66312-7-I

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

---

GLORIA BRIGGS, et. al.,  
Appellants

vs.

SEATTLE SCHOOL DISTRICT NO. 1

Respondent/Appellee

---

APPEAL FROM SUPERIOR COURT  
FOR KING COUNTY

---

APPELLANTS' REPLY BRIEF

---

Scott E. Stafne, WSBA # 6964  
Attorney for Appellants

Stafne Law Firm  
239 N. Olympic Avenue  
Arlington, WA 98223  
Phone: 360-403-8700  
Fax: 360-386-4005

2011 APR 05 PM 10:25

 ORIGINAL

**Table of Contents**

REPLY to "I. Introduction" .....1

REPLY to "III. A. Statement of Facts" .....1

REPLY to "III. B. Procedural History of the Case" .....1

REPLY to "III. C. Contents of the Administrative Record Below" .....3

REPLY to "IV. A. 1. Standard of Review" .....5

REPLY to "IV. A. 2. Standard of Review for Denial of Appellants' Summary Judgment Motion and Granting District's Partial Motion to Dismiss" .....7

REPLY to "B. The Superior Court's Orders Directing Supplementation were Appropriate Remedies to Address the Sufficiency of the Record" ...8

REPLY to "C. Appellate Subject Matter Jurisdiction was Conferred in the Superior Court when Appellants timely filed their notice of appeal pursuant to RCW 28A.645.010" .....15

CONSOLIDATED REPLY to "D. The Superior Court correctly determined that a Number of the Named Appellants Lacked Standing" and "F. This Case is Moot" .....16

REPLY to "3. Standard of Review for the Decision to Exclude the Auditor's Report". RP 21 and REPLY to "E. The Superior Court properly Excluded the Auditors Report" .....19

CONCLUSION .....20

## Table of Authorities

### A. Table of Cases

#### Washington Cases

<i>Abbenhaus v. City of Yakima</i> , 89 Wn.2d 855, 860, 576 P.2d 888 (1978) .....	12, 16
<i>Board of Regents of University of Washington v. City of Seattle</i> , 108 Wn.2d 545, 741 P.2d 11 (1987) .....	9, 14, 16
<i>Bravo v. Dolsen Cos.</i> , 125 Wn.2d 745, 752, 888 P.2d 147 (1995) .....	8
<i>Brown v. State</i> , 155 Wn.2d 254, 261-2, 119 P.3d 341 (2005) .....	14
<i>Conom v. Snohomish County</i> , 144 Wn.2d 154, 118 P.3d 344 (2005)....	5, 8
<i>Coughlin v Seattle School District</i> , 27 Wn.App. 888, 621 P.2d 183 (1982) .....	16
<i>Crosby v. County of Spokane</i> , 137 Wn.2d 296, 976 P.2d 32 (1999) .....	9
<i>Davis v. Gibbs</i> , 39 Wn.2d 481, 236 P.2d 545 (1951) .....	8, 9
<i>Davis v. Washington State Dept. of Labor &amp; Industries</i> , 159 Wn.App. 437, 245 P.3d 253 (2011) .....	5, 6
<i>Hattrick v North Kitsap School District</i> , 81 Wn.2d 688, 504 P.2d 302 (1972) .....	3, 10, 11
<i>Haynes v. Seattle School District</i> , 111 Wn.2d 250, 758 P. 2d 7 (1988) .....	6, 8, 16
<i>Henderson v. Shinseki</i> , 131 S. Ct. 1197, 1202-1206 (2011).....	6, 9

<i>Household Finance Corp. v. Washington</i> , 40 Wn.2d 451, 244 P.2d 260 (1952) .....	6
<i>Humphrey Industries, Ltd. v. Clay Street Associates, LLC</i> , 242 P.3d 846 (2010) .....	8, 9
<i>Inland Foundary v Spokane Air Pollution Control Auth.</i> , 82 Wn.App. 67, 70-1, 915 P.2d 537 (1996) .....	9
<i>In re Marriage of Horner</i> , 151 Wn.884, 891, 93 P.3d 124 (2004) .....	19
<i>Loveless v Yantis</i> , 82 Wn.2d 754 (1973) .....	4, 9, 14, 15
<i>Neah Bay Chamber of Commerce v. Department of Fisheries</i> , 119 Wn.2d 464, 832 P.2d 1310 (1992) .....	4, 9, 14, 15
<i>Satomi Owners Ass'n v. Satomi, LLC</i> , 176 Wn.2d 781, 796, 225 P.3d 213 (2009) .....	19
<i>Seattle Bldg. &amp; Const. Trades Council v. Apprenticeship &amp; Training Council</i> , 129 Wn.2d 787, 920 P.2d 581 (1996) .....	5, 6, 18
<i>State ex rel. Cosmopolis Consol. School Dist. 99 v. Bruno</i> , 59 Wash.2d 366, 369, 367 P.2d 995 (1962) .....	17
<i>Sterling v. Spokane County</i> , 31 Wn.App. 467, 472 – 473, 642 P.2d 1255 (1982) .....	17
<i>Sugar Cane Growers Coop v Veneman</i> 289 F.3d 89, 94-95 (2002) .....	18
<i>Washington State Dept. of Labor &amp; Industries</i> , 159 Wn.App. at 445 .....	9
<i>Weems v North Franklin School District</i> , 109 Wn.App. 767, 37 P.3d 354 (2002) .....	3, 4, 10, 11
<b>B. Constitutions</b>	
Wash. Const. art. I, § 10 .....	6
Wash. Const. art. IV, § 6 .....	16

**C. Statutes**

**Washington Statutes**

RCW 28.320.015 .....17

RCW 28A.335 .....2, 17

RCW 28A.645.010 .....15

RCW 28A.645.020 .....1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 20

RCW 28A.645.030 .....6

**REPLY to "I. Introduction", Response Brief (RB) 1-2:**

This appeal is not about whether the School Board's final decisions were arbitrary and capricious. This appeal is about the School Board's compliance with RCW 28A.645.020, which states:

Within twenty days of service of the notice of appeal, the school board, at its expense, or the school official, at such official's expense, shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed. Such filings shall be certified to be correct.

**REPLY to "III. A. Statement of Facts", RP 3-5:**

The "statement of facts" presented by the School District has little, if anything, to do with the central issue of this appeal; *i.e.* determining whether the District sufficiently complied with RCW 28A.645.020 to give the Superior Court authority to decide the merits of an appeal.

**REPLY to "III. B. Procedural History of the Case", CP 5-14):**

At page 6 of the Response Brief, the District states it "submitted a 'Transcript of Evidence' to serve as the administrative record for the matter"<sup>1</sup>. Further down page 6 the District states the basis of Parent's summary judgment motion "was a belief that the record was insufficient because it contained summaries of public input rather than individual

---

<sup>1</sup> The first sentence of RCW 28A.645.020 does not give the District the authority to provide only certain documents to the Court to "serve as the administrative record", The statute required the District produce a "complete transcript of evidence" not just the evidence the District wanted to "serve as the administrative record".

emails and letters". Parents' objections to the record were that the District originally created an administrative record that was designed to support the School Board's policy decisions; not reflect the evidence the School Board actually considered with regard to its policy making pursuant to RCW Chapter 28A.335.<sup>2</sup>

The District states at page 7 "[t]he District complied with the Superior Court's [original summary judgment] ruling, filing a supplementation of the record and accompanying certification on November 17, 2009." Parents do not agree. The Superior Court's order provided: "[t]he Court ORDERS that the Respondent supplement the transcript of the evidence and certify the same relating to the decision for which a complaint has been filed". CP 391:25-25. The supplemented transcript did *not* certify the administrative record "to be "correct" as was required by RCW 26A.645.020. Also, the District's statement is incorrect because the Superior Court specifically found in its December 15, 2010 order that the supplemented "Transcript of Evidence" was **not adequate for performing judicial review**. CP 574:21-23.

---

<sup>2</sup> See e.g. Clerk's Papers (CP) 143:7-149:12; 192:1-198:2; 133:14-134:6; 136:1-15; 137:1-142:7; 143:7-149:23; 477:8:23-9:18; 479:11:5-12:2; 515:46:16-516:47:23; 518:50:1-519:50-21; 528:59:6-531:62:7; 338:3-342:10; 343-351; 353:5-356-2; 437-444; 589-599; 576-584; 630-637; 639-693; 863-866; 867-877; 897-984; 1002-1008.

On pages 10 and 11 the District claims Parent's counsel refused to cooperate in establishing a "merits" briefing schedule. This is misleading. Parent's counsel took the position that the Superior Court had no authority to decide the merits of an appeal based on a record that did not comply with RCW 28A.645.020. CP 395-412. This same issue, whether courts must construe RCW 28A.645.020 as written, is the subject of *Stafne v Seattle School Board*, Appeal No. 66140-0-I, which is currently pending in this Court. The primary issue in that appeal is whether the Superior Court properly sanctioned Mr. Stafne for refusing to participate in a merits appeal based on a record that did not comply with RCW 28.645.020.

It is true Parents in this appeal and other appeals sought discretionary review and original review in the Supreme Court asking that Court to interpret RCW 28A.645.020 to mean what it says. RB 12-3. The District's comments about the Commissioner's rulings in these cases (RB 12) are incomplete because the Response Brief fails to state the **Commissioner held RCW 28A.645.020 requires the District to certify the record to be correct** before the merits of an appeal can be heard. CP 973; 977, 983-4.

**REPLY to "III. C. Contents of the Administrative Record Below"** RB, 14-6.

The District cites *Hattrick v North Kitsap School District*, 81 Wn.2d 688, 504 P.2d 302 (1972) and *Weems v North Franklin School*

*District*, 109 Wn.App. 767, 37 P.3d 354 (2002) as being appellate authority with regard to the "arbitrary and capricious" standard of review. RB 14-5. They are not. Both cases involved "de novo" review of quasi-judicial proceedings; not review of policy-making decisions. *See* RB, p 17.

Cases involving the arbitrary and capricious standard, which the Commissioner recognized as setting forth applicable appellate standard for review of a policy making record are: *Neah Bay Chamber of Commerce v Department of Fisheries*, 119 Wn.2d 464, 474, 832 P.2d 1310 (1992) and *Loveless v Yantis*, 82 Wn.2d 754, 762-3 (1973). CP 973, 977, 983-4. The District claims it eventually produced an administrative record consisting of 25,304 documents and seven digital video disks on December 10, 2009. RB 9-10, 15. But, this was long after March 23, 2009, the day the 20 day deadline set forth in RCW 28A.645.020 for filing a complete and properly certified transcript expired. The record filed on March 23, 2009 contained less than one-tenth of the final record. CP 1153-3479. Neither the March nor December record was ever "certified to be correct".

At page 16 of the Response Brief the District states:

"Appellants have never disputed that they had an opportunity to be heard prior to the decisions being made, or that they

were actually heard by the School Board. They just disagreed with the decisions the School Board made."

The District knows this isn't true. The District points out Parents filed **four** motions regarding the adequacy of the record. RB, p. 14. Parents carefully pointed out in these motions that the 20,000 + page record the District finally did produce did not contain testimony from Parents or others who shared their views<sup>3</sup>.

**REPLY to "IV. A. 1. Standard of Review" RB 17-20:**

The District asserts the arbitrary and capricious standard of review applies to this appeal and is "highly deferential to the administrative fact finder". See RB 17-18. Parents disagree. The issue Parents have raised is whether the Superior Court **had authority** to decide an appeal based on a record that did not comply with the requirements of RCW 28A.645.020. Proper construction of a statute is reviewed de novo. *Seattle Building & Construction Trades Council v Apprenticeship & Training Council*, 129 Wn.2d 787, 799, 920 P.2d 581 (1996). A court's Superior Courts authority to decide an appeal is also reviewed de novo. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005); *Davis v. Washington State Dept. of Labor & Industries*, 159 Wn.App. 437, 245 P.3d 253

---

<sup>3</sup> See e.g. Declarations of Rickie Malone, CP 19-70, 321; Declarations of Lara Grauer, CP 233-264, 297-320; Declaration of Sahilia Changebringer, CP 264-278; Declarations of Chris Jackins, CP 218-20, 322-336, 560-570.

(2011). The District's interpretation of RCW 28A.645.020 is not entitled to deference under these circumstances; *Cf. Seattle Building & Construction Trades Council*, *supra*; *Henderson v. Shinseki*, 131 S. Ct. 1197, 1202-1206 (2011).

The District's assertion the Superior Court did not have jurisdiction over Parents' constitutional arguments (RB 18-20) was raised below (CP 180-181) and rejected. CP 391:20-23; 574:21-23. Just like the Court in *Haynes v Seattle School District*, 111 Wn.2d 250, 758 P.2d 7 (1988) was required to construe RCW 28A.645.030 so as to not offend the Separation of Powers doctrine as part of its interpretation of RCW 28.645.030 during an appeal, the same judicial duty applies here. Courts are required to construe RCW 28A.645.020 in an appeal so that the statute is consistent with the Constitution. *Id*; *Household Finance Corp. v Washington*, 40 Wn.2d 451, 455- 458, 244 P.2d 260 (1952). Because the District has chosen not to address Parents claims that the Superior Court's construction of RCW 28A.645.020 violated the Separation of Powers and Parents right to access to the courts under CONST. Article I, Sec. 10 as implemented through RCW 28A.645, Parents have nothing to reply to with regard to

these important issues which were raised in the Superior Court<sup>4</sup> and in this Court in their Opening Brief (OB) 35-41.

**REPLY to "IV. A. 2. Standard of Review for Denial of Appellants' Summary Judgment Motion and Granting District's Partial Motion to Dismiss"**

The District states: "The focus of this appeal is on the denial of Appellant's 2009 motion for summary judgment ...". RB 20. Appellants' 2009 motion is not the centerpiece of Parent's appeal. As the District points out Parents filed **four** motions regarding the adequacy of the record. RB 14. These motions included: the 2009 motion for summary judgment (CP 132-150), the Motion to Reconsider and/or Amend Summary Judgment Order (CP 286-294), the Motion to Strike Appeal Hearing on the Merits for Lack of Subject Matter Jurisdiction (CP 576-584); and "Opening Brief submitted by Counsel relating to legal issues not related to the merits of this appeal" (CP 862-866). This appeal challenges the denial by the Superior Court of **all four motions** relating to the authority of the Superior Court to decide the merits of an appeal in the absence of a record filed by the School Board that complies with RCW 28A.645.020.

Parents do not agree this Court must construe defendants' failure to comply with the 20 day deadline and certify the record to be "correct" in a

---

<sup>4</sup> See e.g. CP 133:4-14; 143:143:7-149:12; 581:13-583:18"... To be clear, Parents contend that RCW 28A.645.020 must be read in a way that is consistent with the Separation of Powers Clause and Article 1, Section 10 of the Washington Constitution...."

light most favorable to this District. This Court must determine as a matter of law whether the 20 day deadline and "correct" certification requirements are jurisdictional and/or procedural prerequisites to an appeal under RCW 28A.645. *Conom v. Snohomish County*, 144 Wn.2d 154, 118 P.3d 344 (2005); *Henderson v. Shinseki*, 131 S. Ct. 1197, 1202-1206 (2011). This Court should construe RCW 28A.645.020 as it is plainly written, *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995), and in manner that is consistent with the Constitution. *Haynes*, supra.

If this Court determines as a matter of law that both the timeliness and certification requirements are not jurisdictional, then this Court should determine whether the District has substantially complied with the timeliness and certification procedural requirements. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 242 P.3d 846, 851 - 853 (2010); *Davis v. Gibbs*, 39 Wn.2d 481, 485, 236 P.2d 545 (1951).

**REPLY to "B. The Superior Court's Orders Directing Supplementation were Appropriate Remedies to Address the Sufficiency of the Record".** RB 21- 30.

***Timeliness Requirement:*** In order to find the belated supplementations of the record were appropriate remedies the Superior Court had to determine whether the requirements of RCW 28A.645.020 constituted jurisdictional requirements or claims filing procedures. *Conom v. Snohomish County*, 144 Wn.2d 154, 118 P.3d 344 (2005);

*Henderson v. Shinseki*, 131 S. Ct. 1197, 1202-1206 (2011). As the Superior Court did not address why the District does not have to comply with the statutes 20 day timeliness requirement, the responsibility for articulating some reasoned analysis regarding this first impression issue has become the responsibility of this Court. See. *Washington State Dept. of Labor & Industries*, 159 Wn.App. at 445. This is not a "close call" case where the District has missed the deadline by a day or a week or several weeks. This is an appeal where the District waited months to file documents with Court. Thus, even if the 20 day deadline were merely a procedural deadline the District has failed to substantially comply with this timeliness requirement. *Humphrey Industries, Ltd.*, supra; *Davis*, supra; *Crosby v. County of Spokane*, 137 Wn.2d 296, 302, 303, 976 P.2d 32 (1999)

***The materials filed by the District never constituted a record which was certified "to be correct".*** As stated by the Commissioner judicial review required a record consisting of "all of the evidentiary material upon which an administrative decision based its decision", citing *Neah Bay*, supra, and *Loveless v Yantis*, supra. CP 972 and 976-977. See also *Board of Regents of University of Washington v City of Seattle*, 108 Wn.2d 545, 556, 741 P.2d 11 (1987); *Inland Foundary v Spokane Air Pollution Control Auth.*, 82 Wn.App. 67, 70-1, 915 P.2d 537 (1996).

The Superior Court found in 1.) its oral ruling on November 3, 2009; 2.) its written summary judgment order on December 9, 2009; and 3.) its order adjudicating Parent's motion for reconsideration of the previous summary judgment on December 17, 2009 that the record before the Superior Court did not comply with RCW 28A.645.020 and/or was not adequate for performance of judicial review. CP 523:17-19; 279; 391:24-25; 574:1-2. In other words, over 6 months after the 20 days deadline had passed for filing a complete and certified record, the Superior Court specifically found the record filed by the School Board with the Court was not legally adequate. Moreover, the Superior Court never did issue a direct finding that the 25,000 + documents finally filed with Superior Court in December 2009 complied with the certification requirements set forth in the second sentence of RCW 28A.645.020 or was adequate for judicial review. Rather, the materials filed consisted of all the materials the District could find that might be related to school closures. CP 283; 422-433.

***Hattrick and Weems do not excuse the District's refusal comply with RCW 28A.645.020 certification requirements.*** The District urges this Court to 1.) utilize the holdings of *Hattrick* and *Weems* to allow supplementation of the record with any materials which might have been submitted to the School Board and 2.) overlook those materials submitted

to the School Board which were lost. *See* n.3. Hattrick and Weems both involved quasijudicial review where a transcript of evidence was kept and therefore a record could be treated. The facts show no transcript was kept here. Parents ask this Court to follow the letter of RCW 28A.645.020 and hold the appeal proceedings invalid because the school Board failed to keep an adequate record for judicial review. Court to review.

The first sentence of RCW 28A.645.020 states in pertinent part: "Within twenty days of service of the notice of appeal, the school board ... shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed." It is undisputed the School Board did not specifically or substantially comply with this 20 day deadline. OB 30-33. The District has never argued these words do not impose a 20 day deadline. It has only argued that the record can be supplemented after twenty days. But this argument runs contrary to the plain language of the statute which requires a complete and properly certified record to be filed in twenty days.

The District argues that the requirement that the School Board must file a "transcript of evidence and the papers and exhibits relating to the decision to the decision for which a complaint has been filed" can be met by providing the Superior Court with all the materials kept pursuant to the **Public Records Act** which the School Board *might have* considered

in making its decision. RB 32. But one again the plain language of the statute does not support this argument. The term "transcript" means: "an exact copy or reproduction, especially one having an official status." *Dictionary.com Unabridged.*

The term "exhibit" means:

**"1 a:** a document or object produced and identified in court as evidence **b:** a document labeled with an identifying mark (as a number or letter) and appended to a writing (as a brief) to which it is relevant" Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc.

Evidence means:

something that furnishes or tends to furnish proof; *especially:* something (as testimony, writings, or objects) presented at a judicial or administrative proceeding for the purpose of establishing the truth or falsity of an alleged matter of fact..." Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc.

In *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 860, 576 P.2d 888 (1978) the Supreme Court observed that the term "evidence" when used in a statute related to appellate review referred to the record actually before the administrative agency. The Court noted:

"While the legislative intent would have been clearer and easier to divine had the term 'transcript' or 'evidence in the transcript' been used instead, we conclude that this term refers to the evidence contained in the transcript."

Here the legislature specifically provided the record in an appeal brought pursuant to RCW Chapter 28A.645 was to be composed of the

"transcript of evidence" of "papers", "exhibits", and "evidence" presented to the School Board "related to the decision for which a complaint has been filed". It is clear the District did not keep such a transcript and is not willing to state the one it ultimately created is "correct". Certainly, it puts the cart before the horse when a Court decides that a record can be supplemented without addressing the issue of whether an adequate record which can be supplemented actually exists. It is undisputed that the neither the Court nor Parents were ever provided a record the District was willing to certify "to be correct".

For example, District's counsel contended during oral argument "there are *questions of fact*" about what evidence the School Board actually considered which precluded a grant of summary judgment regarding the records compliance with RCW 28A.645.020. CP 503:36:10-505:37:10. When given the chance through discovery to clarify the adequacy of the supplemented record the District specifically refused to state the administrative record complied with RCW 28A.645.020; claiming that this would "require a conclusion of law" on the part of the District. CP 590:20591:1<sup>5</sup>; 589:1-4; 589:9-12. Similarly, in those same discovery responses the District claimed the School Board had no

---

<sup>5</sup> The District's response states: This subpart seeks for the District to provide legal conclusions as to if the Transcript of Evidence as filed and supplemented complies with RCW 28A.645.020. No answer is required."

obligation to certify the record relating to the school closures at all. CP 594; 1-3; 4.) Perhaps in an attempt to explain why the record did not contain the papers and evidence and exhibits submitted by Parents and others, the District claimed in its responses to discovery that it had no idea why persons were submitting documents about school closures to the School Board, CP 595:2-5; 598:9-15; 599:2-6.

In a case such as this - where the decision-maker has purposely failed to keep any transcript of evidence relating to its decision - the appropriate authority to apply is *Loveless*, supra; *Neah Bay*, supra; and *Board of Regents of University of Washington*, supra. This is because these appellate precedents involved situations where it was impossible for the judiciary to review a constitutionally sufficient record containing the evidence actually considered in challenging a decision. This is exactly what has occurred here and the District does not dispute this. *See Responses to Discovery*, CP 587-599.

The Commissioner of the Supreme Court determined the second sentence of RCW 28A.645.020 - "[s]uch filings shall be certified to be correct" - means exactly what it says. The Superior Court had no authority to allow the School Board to refuse to comply with this statute. *Brown v. State*, 155 Wn.2d 254, 261-2, 119 P.3d 341 (2005).

At page 29 of the Response Brief the District asserts without any citation to case law or the language of the second sentence of RCW 28A.645.020 that "[a]ppellants make the overly formalistic argument that because Ms. Ferguson's initial certification does not use the word "correct", the terms of RCW 28A.645.020 have not been met." The District describes Parents' argument as "disingenuous" given the "actual language of the certifications" and the "wording of the statute itself".

RCW 28A.645.020 requires the filings be "complete" (*i.e.* include the evidence submitted to the School Board related to its school closure decision) and be "certified to be correct". The evidence in the record establishes these standards were not met. 591:12-17 (original transcript included only those documents Holly Ferguson knew all School Board members had reviewed.); 593:4-5 (District does not keep records relating to legislative decisions.); *See* testimony at CP 425-431; *supra.*, n. 3

**REPLY to "C. Appellate Subject Matter Jurisdiction was Conferred in the Superior Court when Appellants timely filed their notice of appeal pursuant to RCW 28A.645.010". RB 30-33.**

The District takes the position that "filing of the record facilitates judicial review, but it is not a jurisdictional prerequisite for bringing an appeal...". RB 31. While this might be true in the narrow context of "bringing an appeal" it is not true in the context of the superior court's "authority to decide" the merits of an appeal. *Loveless, supra; Neah Bay,*

supra; and *Board of Regents of University of Washington*, supra; *Abbenhaus v. City of Yakima*, supra. Const. Art IV, Sec. 6 provides that superior courts have such appellate authority "as is prescribed by law". RCW 28A.645.020 requires a superior court decide an appeal based on a record that strictly or substantially complies with RCW 28A.645.020. The Transcript of Evidence the District filed was 1.) not timely; 2.) not a "transcript of evidence" pursuant to the Separation of Powers Doctrine and Const Art 1, Sec. 10; and 3.) was not "certified to be correct".

The cases cited for the proposition that when there is no subject matter jurisdiction to **bring** a case do not apply to a situation where a court has no authority to decide the substantive merits of an appeal because a statutorily and constitutionally inadequate record **has not** been filed with the Court. The only permissible result in such an appeal is to invalidate the agency/municipality decision and remand the decision back for further consideration. OB, 41-2.

**CONSOLIDATED REPLY to "D. The Superior Court correctly determined that a Number of the Named Appellants Lacked Standing" and "F. This Case is Moot". CP 30-38; 41-43.**

The District cites *Coughlin v Seattle School District*, 27 Wn.App. 888, 621 P.2d 183 (1982) in support of its standing arguments. ***Coughlin* was expressly overruled in *Haynes***, 111 Wn.2d at 254, n. 2. Since the District

continues to cite this reversed case, this Court should consider sanctioning the District for doing so.

Parents meet the standing test for invoking the judiciary's inherent power because they challenge whether the school board's policy making function regarding school closures was legally performed. "'The legality of the act of the officials is subject to review' directly under the Constitution." *See State ex rel. Cosmopolis Consol. School Dist. 99 v. Bruno*, 59 Wash.2d 366, 369, 367 P.2d 995 (1962).

Parents also meet the "aggrieved person" standing test prescribed by the legislature in RCW 28A.645.020. Where, as here, a statute allows "persons aggrieved" to appeal, the standards for standing are less restrictive. *Sterling v. Spokane County*, 31 Wn.App. 467, 472 – 473, 642 P.2d 1255 (1982). Parents' appeal in this Court attacks only the District's procedures used to close schools; not the ultimate school closures.

RCW 28A.335.020 requires School Boards to create a policy which "provides for citizen involvement" relating to closing schools. The policy requires "reasonable notice to the *residents affected* by the proposed school closure" and requires the notice pertaining to any school closure "shall contain the date, time, place, and purpose of the hearing". RCW 28.320.015 (2) provides that before adopting any policy "the School Board shall comply with the notice requirements of the open public

meetings act, chapter 42.30 RCW" and "provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors."

This appeal is solely about Parents procedural rights under the constitution and RCW Title 28A to have a record created for purposes of the School Board's consideration of evidence and the judiciary's review of the School Board's policy decisions based on such evidence. Persons who allege deprivation of procedural protections to which they are entitled do not have to prove that if they received the required procedure the substantive result would have been altered. "All that is necessary is to show that the procedural step was connected to the substantive result." *Sugar Cane Growers Coop v Veneman* 289 F.3d 89, 94-95 (2002). Parents have standing to challenge the failure to keep a legally sufficient administrative record relating to closing schools. *See also Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 794 - 795, 920 P.2d 581 (1996), *cert. denied*, 520 U.S. 1210 (1997). "The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy."

The District also claims now, as it did in November 2009, that this appeal is moot. CP 187-188. The record establishes these Parents and

other Parents have raised the identical issue with the Supreme Court in three actions for discretionary review and one original action. In each of these cases where the District has to certify the transcript of evidence "to be correct", the District has claimed the appeal has become moot.

Courts may review a moot case if it presents issues of "continuing and substantial public interest." *Satomi Owners Ass'n v. Satomi, LLC*, 176 Wn.2d 781, 796, 225 P.3d 213 (2009) (quoting *In re Marriage of Horner*, 151 Wn.884, 891, 93 P.3d 124 (2004)). In deciding whether a case presents issues of continuing and substantial public interest, three factors are determinative: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." *Satomi*, 167 Wn.2d at 796 (quoting *Horner*, 151 Wn.2d at 892). This Court may also consider "the likelihood that the issue will escape review because the facts of the controversy are short-lived." *Satomi*, 167 Wn.2d at 796 (quoting *Horner*, 151 Wn.2d at 892). The facts as discussed herein show this appeal meets the criteria set forth above.

**REPLY to "3. Standard of Review for the Decision to Exclude the Auditor's Report". RP 21 and REPLY to "E. The Superior Court properly Excluded the Auditors Report", p. 38-41;**

The Auditor's Report was not offered for consideration as part of the merits appeal. CP 1009. The Auditor's Report was offered as

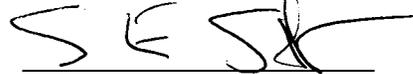
evidence in support of Stafne's Second Appearance (CP 897-948) in support of the Reply relating to "legal issues not related to the merits of this appeal". (CP 1009-1091) The Report was properly authenticated by the Auditor's seal. The report was not hearsay because it contained an admission by the School Board that it held meeting pursuant to the Open Meeting Act regarding school closures for which no records were kept. This violated the Open Meetings Act and RCW 28A.645.020. CP 908.

### **CONCLUSION**

The Superior Court's decision affirming the School Board pursuant to RCW Chapter 28A.645 should be reversed.

Dated this 25<sup>th</sup> day of April, 2011.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'S E Stafne', written over a horizontal line.

Scott E. Stafne, WSBA #6469

No. 66312-7-I

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

---

GLORIA BRIGGS, et. al.,  
Appellants

vs.

SEATTLE SCHOOL DISTRICT NO. 1

Respondent/Appellee

---

APPEAL FROM SUPERIOR COURT  
FOR KING COUNTY

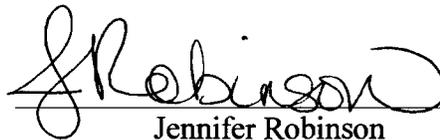
---

DECLARATION OF SERVICE

---

I, Jennifer Robinson, declare under the penalty of perjury that I served a copy of Appellants' Reply Brief on appellee's attorney by depositing a copy of these document with the U.S. Postal Service addressed to Shannon M. McMinimee and Mark F. O'Donnell, Preg O'Donnell & Gillett PLLC, 1800 Ninth Avenue, Suite 1500, Seattle, Washington 98101-1340.

Dated: April 25, 2011, at Arlington, Washington.

  
Jennifer Robinson

 ORIGINAL