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No. 58383-6-II

Case #: 1033311

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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M.G.

Petitioner,

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT et. al.

Respondent.

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PETITION FOR REVIEW

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Appendix A July 16, 2024, Division II Decision *M.G. v BISD*

Appendix B Plaintiffs' Opening Brief (dated August 31, 2023)

Appendix C Deposition Transcript Excerpts- BISD's Peter Bank Knudsen

Appendix D BISD's confirmed litigation hold letter dated April 24, 2023

Appendix E Deposition Transcript Excerpts- BISD's Peter Bank Knudsen

### **A. IDENTITY OF PETITIONER**

M.G., a male, Section 504 of the Rehabilitation Act of 1973 and prior student of Bainbridge Island School District (“BISD”) seeks this Court’s review of the decision set forth in Part B.

### **B. COURT OF APPEALS DIVISION II DECISION**

The Court of Appeals, Division II, filed an unpublished decision affirming the Superior Court’s decision terminating review on July 16, 2024. (Appendix A) M.G. requests review by the Washington State Supreme Court in this Petition.

1) Division II completely failed to discussed “RCW 28A.645.020-Transcripts filed, certified.” Neither BISD, nor the School Board Members (“SBM”), provided transcripts to the Court. The RCW required SBM “shall file a complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed.” “Such filing shall be certified to be correct.” On October 13, 2021, BISD’s SBM conducted a Zoom sexual harassment appeal hearing (“Zoom hearing”). Witness testimony was presented to the SBM. The SBM asked questions and made statements in the Zoom hearing. SBM failed to record or transcribe the Zoom hearing based on “legal counsel advice.”

On December 7, 2021, BISD's Superintendent Peter Bang-Knudsen ("PBK") filed a "Certification of Record." No record or transcripts were filed or certified by BISD detailing testimony or "evidence" from BISD's witnesses or articulating reasons for SBM's decision at the Zoom appeal hearing.

2) Division II improperly challenged M.G.'s Assignment of Errors attributable to BISD's SBM under RAP 10.3.(a)(4) in M.G.'s Opening Brief [Page 8]. M.G.'s Opening Brief stated, "The COL failed to cite a case or a legal standard to support the COL. BISD, SBM and Adams erred in concluding the following:" M.G. listed SBM's errors, specifically citing SBM's *alleged* conduct pursuant to RAP 10.3 (a)(4). (Appendix B) Division II, however, claimed, "M.G. confusingly focuses all of his assignments of error and arguments on the decision *of the superior court.*" (Opinion Pg 5)

Despite the assignment of errors to SBM, Division II erred by stating, "Because MG failed to assign error to or make any argument about the board's decision, we are unable to review the merits of MG's appeal." Division II failed to review M.G.'s Assignment of Errors attributable to SBM.

3) Finally, Division II issued a conflicting decision on a case involving substantive issues on which there is a published case. *Mercer Island School District v OSPI* 186 Wn.App. 939, 347 P.3d 924 (2015). This case presents a direct conflict involving substantive issues between Division I and Division II requiring Supreme Court review. [RAP 13.4(b)(2)] *Mercer Island School District v OSPI* 186 Wn.App. 939, 347 P.3d 924 (2015) involved:

- a) harassment, bullying and intimidation of a Section 504 student;
- b) investigator/attorney Jeffrey Ganson (“Ganson”);
- c) investigation by a biased, compromised and partial investigator, who omitted relevant facts and reached unjustified conclusions;
- and d) Washington Schools Risk Management Pool’s (“WSRMP”) improper involvement in the case. *M.G. v BISD* involved nearly identical substantive issues [a) - d)] resulting in a decision which directly conflicted with Division I’s *Mercer Island* decision.

### **C. ISSUES PRESENTED FOR REVIEW**

- 1) Did RCW 28A.645.020 require BISD’s SBM to record and provide certified transcripts, or “evidence” of the 2021 Zoom appeal hearing to the court? Did the failure of certified transcripts, or “evidence” preclude the court’s *de novo* review of the SBM’s October 13, 2021 Zoom hearing and resulting decision?

- 2) Did Division II commit reversible error in not reviewing M.G.'s Opening Brief for Assigned Errors to SBM under RAP 10.3(a)(4) particularly where SBM failed to provide "RCW 28A.645.020 - Transcript filed, certified?"
- 3) Did Division II issue a decision, with substantively identical issues, in direct conflict with Division I's *Mercer Island School District v OSPI* 186 Wn.App. 939, 347 P.3d 924 (2015)? [RCW 2.06.030 and RAP 13.4]

#### **D. STATEMENT OF THE CASE**

Division II's unpublished opinion set forth a version of rules and procedures in the case, but omitted relevant facts and reached unjustified conclusions that bear emphasis for this Court's review.

First, BISD's Superintendent "PBK" certified the record *without filing any certified transcripts* from the October 13, 2021 Zoom hearing. RCW 28A.645.020 mandated "Transcripts filed, certified." Three months prior to the October 13, 2021 Zoom hearing, M.G. requested BISD preserve all writings, records and recordings in a July 7, 2021 litigation hold (CP 57-60). SBM failed to preserve the October 13, 2021 Zoom hearing under the litigation hold and under RCW 28A.645 based on "legal counsel advice." (See Appendix C)

On December 16, 2021, M.G. filed a notice of Incomplete Record after BISD's SBM failed to provide any transcripts. (CP 2)

On February 18, 2022, M.G. filed a Motion to Compel a complete record with transcripts pursuant to RCW 28A.645.020. (CP 158)

On May 12, 2023, M.G. filed a Motion to Compel a complete record with transcripts pursuant to RCW 28A.645.020. (CP 486)

Both motions to compel a complete record (evidence from transcripts) were denied. *BISD/SBM spoliated valuable evidence.*

Second, without any hearing transcripts to review, Findings of Fact and Conclusions of Law ("FOF" & "COL") were issued on June 7, 2023. The FOF COL made reference to the board decision without any supporting evidence, or transcripts. Division II failed to address RCW 28A.645.020 in the unpublished decision. To assist the court, M.G. took the deposition of BISD's Superintendent on July 3, 2024. In the deposition, PBK confirmed SBM's Zoom appeal hearing was not recorded, on "legal advice." The deposition is additional evidence under RAP 9.11. Excerpts of deposition testimony are provided below:

PBK was asked, "Did Bainbridge Island School District preserve all the audio records regarding the appeal?" PBK responded, "I don't believe there were audio records regarding that appeal."

PBK was asked, “Did Bainbridge Island ever preserve any video records or videoconferencing regarding that appeal?” PBK stated, “I don’t believe there were any video recordings of that appeal.”

PBK was asked, “So the hearing was conducted by Zoom, correct? PBK stated, “I was there along with school board members in the school district board meeting room.” “As I recall you were on Zoom.”

PBK was asked, “And does the school district have a copy of that October 13, 2021 Zoom hearing?” PBK stated, “It was not recorded.”

PBK was asked, “Okay. Did you direct the Bainbridge Island School District staff not to record that Zoom hearing?” PBK stated, “It was based on legal advice.”

PBK was asked, “Okay. So someone other than you determined that it was not going to be recorded?” PBK stated, “correct.”

PBK was asked, “But you were the one that received the litigation hold, not legal counsel; correct?” PBK stated, “Correct.”

PBK was asked, “And the school board received notice of the litigation hold; correct?” PBK stated, “Correct.”

PBK was asked, “But the October 13, 2021, Zoom hearing was not preserved, correct?” PBK stated, “Correct.”

PBK was asked, “Did you receive notice that you weren’t supposed to record it in writing, or just over the telephone, or in person?” PBK stated, “I don’t recall.”

PBK was asked, “Do you know if there’s an electronic record of that direction not to record the October 13, 2021, Zoom hearing?” PBK stated, “I do not.”

[Deposition Transcripts attached as Appendix C]

BISD's SBM did not record the October 13, 2021 appeal hearing or create a certified transcript based on legal advice before filing a Notice of a Complete Record. BISD's SBM knowingly failed to record the October 13, 2021 Zoom hearing, and violated the July 7, 2021 litigation hold (CP 57-60) by not recording the Zoom hearing in order to prevent a record of conflicting testimony, citation to SBM's comments and specific rationale for its decision. Based on legal advice SBM/PBK did not record the Zoom appeal hearing. SBM/PBK were aware of RCW 28A.645.020 and the litigation hold from July 7, 2021 to April 24, 2023. (Appendix D)

Without certified transcripts of the October 13, 2021 Zoom hearing, Division II speculated on witness testimony [evidence] and SBM's comments. M.G. appealed the speculative and unjustified conclusions of SBM in the assignment of errors. The speculative and unjustified conclusions pertained to BISD's Policies and Procedures ("P&P"). A court cannot affirm legal holdings based on speculation or conjecture. Speculative decisions must be reversed.

Third, M.G.'s Opening Brief assigned error (to COL # 19), which stated, "M.G.'s October 13, 2021 sexual harassment appeal hearing did not need to be recorded, or transcribed, under RCW



28A.645.020 or Code of Federal Regulations (CFR).” M.G.’s issue was, “Did state law and federal law require a recorded sexual harassment appeal hearing?” RCW 28A.645.020 mandated “transcripts filed, certified” of the testimony from a Zoom hearing. Without compliance with RCW 28A.645.020, the trial court and Court of Appeals were required to reverse the SBM’s decision for failure to provide transcripts, filed and certified under the RCW. Instead of addressing this violation, Division II stated, “We decline to review the merits of M.G.’s claims because he focuses his assignments of error and arguments on the decision of the superior court rather than of the board.” “Accordingly, we affirm.”

Fourth, M.G.’s Opening Brief assigned error (to COL # 15), which stated, “BISD’s SBM conducted the October 13, 2021 hearing in compliance with P&P and Washington Law.” M.G.’s issue was, “Does the law allow a board to engage in multiple conflicts of interest, concealment of documents and records, falsification of evidence and prejudice/bias against a male, Section 504 student and fail to record a Zoom hearing/meeting?”

Fifth, M.G.'s Opening Brief assigned error (to COL #20), which stated, "SBM [allegedly] properly addressed M.G.'s pre-hearing motions." M.G.'s issues were: 1) Can BISD SBM's attorney [old law partner of BISD's attorney] fail to issue a pre-hearing Order on pending Motions to disqualify a decision-maker who has a conflict of interest?" 2) "Should SBM's decision-making process, including their attorney, appear to be fair, impartial and unbiased?" 3) "Must all SBM be fair, impartial and unbiased in sexual harassment appeal hearing proceedings?" M.G. specifically challenged SBM's decision even without the benefit of a RCW-required transcript of the October 13, 2021 Zoom hearing.

Sixth, M.G.'s Opening Brief assigned error (to COL #17), which stated, "The Court concluded that a review of the incomplete record supported SBM's decision that no HIB occurred." M.G.'s issues were, "Did the court properly conclude that a) evidence was not necessary to make a complete record, b) the sexual harassment hearing did not need to be recorded pursuant to 34 CFR §106, c) the hearing transcript was not required under 28A.645.020, d) Murphy, PBK and Ganson did not have conflicts of interest and e) Ganson's biased, prejudicial and partial investigation notes should be excluded because they were embarrassing to BISD and

WSRMP- resulting in SBM's decision to clear BISD/WSRMP of **any** violations of P&P?" M.G. argued that even without a certified transcript of the appeal hearing the SBM violated: i) 34 CFR §106, 28A.645.020; ii) engaged in multiple conflicts of interest; iii) utilized a biased investigator who failed to comply with BISD's P&P; and iv) improperly decided that no HIB violations occurred.

Seventh, M.G.'s Opening Brief assigned error (to COL # 18), which stated, "The board did not conduct a secret after-hearing meeting after the board announced that the hearing was concluded." M.G.'s issue was, "Can SBM's attorney [old law partner of BISD's attorney] conduct an after-meeting hearing with BISD staff, BISD's attorneys, BISD's witnesses and SBM after terminating the Zoom with M.G. and then deny the existence of the meeting?" Despite the failure to record the October 13, 2021 Zoom appeal hearing and after-hearing meeting, M.G. presented evidence that SBM members engaged in an after-hearing meeting with BISD's staff and witnesses. SBM's after-hearing meeting violated M.G.'s due process rights. "SBM's decision relied upon Ganson's testimony and Notes." "SBM's decision was drafted by BISD's old law partner to protect BISD/WSRMP." (M.G.'s Opening Brief pg 47) M.G. specifically assigned errors to SBM's decision.

In each Assigned Error, M.G. referred to the SBM's actions, inactions or failure to comply with the RCWs, CFRs and P&P. Division II erred by stating, " M.G. failed to assign error to the board's decision and fails to include any argument related specifically to the board's decision." The plain text of M.G.'s Opening Brief or Reply Brief demonstrated errors by BISD's SBM.

For example, M.G. and the alleged aggressors were required to be interviewed as required by BISD's Procedure 3706.(Open Brf Pg 62) BISD's Ganson, however, "failed to obtain the interviews of the alleged aggressors and complainant." (Open Brf Pg 54)

In another example,"M.G.'s Section 504 team was required to meet pursuant to BISD's P&P (Policy 3706)" (Open Brf Pg 61) "BISD failed to convene M.G.'s Section 504 team following the sexual harassment pursuant to the P&P." (Open Brf Pg 20).

Division II cited CP 1580, [which was not cited by Appellants, nor Appellee in briefs] as the basis for requiring "a mutually agreeable neutral, third party to investigate the alleged retaliation against [M.G.]." (Op Pg 3) The reason for requiring a neutral third party was predicated on the holding in *Mercer Island v OSPI*, where the court stated, "If the district had truthfully

informed them of its relationship with [its law firm], the [Parents] may have requested that either the compliance coordinator or an unaffiliated law firm conduct the investigation.” [Id at 957] M.G. was entitled to a neutral, unbiased and impartial investigator. BISD did not provide a neutral, unbiased and impartial investigator. WSRMP assigned a WSRMP defense attorney as their investigator.

According to the deposition of BISD’s PBK, WSRMP assigned a WSRMP defense attorney [Ganson], not a neutral, unbiased and impartial investigator. On July 3, 2024, PBK was asked in deposition:

Did you select Jeff Ganson to investigate the HIB complaint?  
PBK answered, “No.”

PBK was asked, “Do you know who did?” PBK answered, “My understanding is he’s assigned to us.”

PBK was asked, “Do you know who assigned him to you?”  
PBK stated, “I believe it was WSRMP.”

(Deposition transcript attached under RAP 9.11 - Appendix E)

The WSRMP executive Board member with BISD was Erin Murphy (“Murphy”). Murphy was simultaneously BISD’s Title IX officer and WSRMP Executive Board member. (CP 29-30)

This conflict of interest was addressed during the Zoom hearing.

M.G. noted that BISD's Murphy failed to serve as a neutral, unbiased and impartial Title IX officer. M.G. also noted that SBMs engaged in conflicts of interest while serving as "neutral, unbiased and impartial" decision-makers. The Zoom hearing transcript was not provided and therefore a *de novo* review was impossible. Each of the statements of fact were included in M.G.'s Opening Brief (Pgs 8-14) under the assignment of errors. Division II excused Murphy from being a biased and partial Title IX officer when obvious conflicts of interest existed.

SBM was advised of *Mercer Island School District v OSPI* during the October 13, 2021 Zoom appeal hearing. Robin Wilt, the plaintiff in *Mercer Island v OSPI* provided a declaration identifying the obvious and uncontroverted similarities. (CP 359) The Court of Appeals Division II issued a decision in contradiction to the Court of Appeals holding in Division I. [*Mercer Is v OSPI*] RCW 2.06.030 requires the Supreme Court resolve conflicts regarding published case law in *Mercer Island v OSPI*, which directly conflicted with the decision in *M.G. v BISD*.

**E. ARGUMENT WHY REVIEW SHOULD BE**  
**ACCEPTED**

1) Division II Incorrectly Interpreted RCW 28A.645.020

Division II's unpublished opinion omitted reference to the crucial unrecorded Zoom hearing, 34 C.F.R. §106.45 and litigation hold. SBM failed to comply with RCW 28A.645.020. The state law required "Transcripts, filed certified." The Court of Appeals failed to implement state law and then required nonexistent evidence from M.G.. The central goal of any statutory interpretation is to carry out legislative intent. *State Dep't of Ecology v Campbell & Gwinn* 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). The court's analysis of a statute must begin by looking at the words of the statute. *Federal Home Loan Bank of Seattle v Credit Suisse Sec LLC* 194 Wn.2d 253, 258, 449 P.3d 1019 (2019) reaffirmed that the bedrock principle of statutory interpretation is the statute's plain language. *Davis v Dep't of Licensing* 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999) The legislature means exactly what it says. Here, SBM intentionally prevented any transcripts. Division II was forced to speculate on witness testimony and SBM's rationale for their decision.

Absent a “complete transcript” of SBM’s administrative record, the court speculated about the testimony or argument offered by BISD’s witnesses during the Zoom hearing. BISD also prevented the SBM from reviewing Ganson’s notes as part of Ganson’s “detailed report.” Division II cited Ganson’s “detailed report” but failed to cite Ganson’s biased report notes. The evidence obtained during the SBM Zoom hearing established Ganson’s bias. Division II did not make any reference to MNSI’s detailed report, or the declaration of M.G.’s expert, ex-FBI investigator Michael Necochea’s cited BISD’s violations. (CP 521)

Division II did not cite *Goodman v Bethel Schl Dist 84* Wn.2d 120, 524 P.2d 918 (1974) which required Bethel School District file a verbatim transcript, as well as, the papers and exhibits relating to the board’s decision. In *Goodman*, testimony by witnesses, before the board, was accepted by the trial court. Division II did not have testimony from Ganson and Murphy, because PBK refused to record the October 13, 2021 Zoom hearing. The trial court was required to review the “complete transcript” [RCW 28A.645.020]. Spoliation results in default judgment. *J.K. v BSD* 500 P3d 138 (2021).



*Goodman* cited *Hatrick*'s "common sense" approach to requiring a "complete transcript" to reach an "unhampered" FOF COL. "Compliance with RCW requires more than a mere filing of the exhibits and papers relating to the board's decision." "The board must also file the complete transcript of the evidence." "Having imposed these duties upon school boards, as part of the appeal process, it would be illogical to conclude that the legislature intended the trial court to totally disregard such evidence in the de novo hearing..." *Goodman* citing *Hatrick v No. Kitsap Schl Dist* 81 Wn.2d 668, 504 P.2d 302 (1972). The court in *Clark v Central Kitsap* 38 Wn.App. 560, 686 P.2d 514 (1984) also cited *Hatrick*. The *Hatrick* court required de novo review with complete transcripts. "A complete transcript may be essential for such purposes as showing inconsistent statements." [*Hatrick* at 670]. "Since this statute requires a trial de novo review before the superior court, it is evidence that the trial court's determination be made independent of any conclusion of the school board, and is to be based solely upon the evidence and testimony which the trial court receives." [*Id*] *State v Fulwiler* 76 Wash.2d 313, 456 P.2d 322 (1969). Division II did not discuss RCW 28A.645.020.

2) Division II Missed Assigned Errors of SBM's Decision

M.G. specifically assigned errors to the SBM in the Opening Brief. M.G.'s assigned errors did not violate RAP 10.3 (a)(4). Even if they did, RAP 1.2(a) makes clear that technical violation of the rules will not ordinarily bar appellate review, where justice is to be served by such review. *Daughtry v Jet Aviation Co* 91 Wn.2d 704, 592 P.2d 631 (1979). In *Daughtry* the Court held, “[W]here the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief, we will consider the merits of the challenge.”

In *State v Olson* 126 Wn.2d 315, 893 P.2d 629 (1995) the State of Washington failed to specifically articulate clear assignments of error to the trial court's order regarding dismissal. Despite a confusing assignment of errors, the Court of Appeals reversed and held, “[s]ince the challenge is clear, justice will be served by reviewing the suppression and dismissal orders.” The Court stated, “We decide the case on its merits, promoting substance over form. [RAP 1.2(a)]” The Washington State Supreme Court cited RAP 1.2(a):

“These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.”

The Supreme Court in *Olson* held, “The clear language of this rule supports the conclusion of the Court of Appeals and compels us to find that a technical violation of the rules should normally be overlooked and the case should be decided on the merits.” “This result is particularly warranted where the violation is minor and results in no prejudice to the other party and no more than a minimal inconvenience to the appellate court.” Division II defied case law with technical violations.

Likewise, the court in *State v Reader’s Digest Ass’n* 81 Wn.2d 259, 501 P.2d 290 (1970) stated, “The fact that the state mistakenly appealed from the order denying its motion rather than from judgment is purely a technicality.” “The state’s obvious and overriding intent was to appeal from the judgment.” M.G. clearly appealed from the SBM’s flawed decision and argued extensively that the court did not have a copy of the testimony/evidence and SBM statements under RCW 28A.645.020 leading to the trial court petition for review and resulting appeal. M.G. dedicated more than 20 pages to the defective SBM decision. Division II never addressed the merits of M.G.’s arguments, instead citing technical violations.

The Court reached similar conclusions regarding RAP 1.2 in *State v Williams* 96 Wn.2d 215, 634 P.2d 868 (1981) and *State v Estrella* 115 Wn.2d 350, 798 P.2d 289 (1990). In every case where technical noncompliance with the rules concerning appellate briefing or notice of appeal in light of RAP 1.2, the Court decided to reach the merits of the case or issue- except in *M.G. v BISD*. Other cases supporting substance over form included: *Queen City Farms Inc v Central Nat'l Ins* 124 Wn.2d 536, 882 P.2d 703 (1994); *National Fed'n of Retired Persons v Insurance Comm'r* 120 Wn.2d 101 116, 838 P.2d 680 (1992).

In *Olson*, the notice of appeal clearly states what was intended, the brief was sufficient for Olson to respond and Olson responded. The parties were not prejudiced and the review process was not significantly impeded by any technical inadequacy in the opening brief. The *Olson* court promoted substance over form. As with M.G.'s appeal and Opening Brief, there was no compelling reason why the case could not be decided on the merits. Division II set the matter without oral argument, where M.G. could have addressed any perceived deficiencies. Division II promoted form over substance.

3) “Division II’s Holding Conflicted with Division I

*Stare decisis* [to stand by decisions and not to disturb settled matters] is the principle that the courts should follow the previous decisions when dealing with substantially identical issues. *State ex rel Washington State Finance Comm v Martin* 62 Wn.2d 645, 384 P.2d 833 (1963); *Stranger Creek v Alby* 77 Wn.2d 649, 466 P.2d 508 (1970). The instant case dealt with substantially identical issues to *Mercer Island v OSPI*, but resulted in differing holdings from different Divisions.

The Division I holding in *Mercer Island v OSPI* established liability for school districts where the administration failed to take reasonable actions in light of known circumstances. The Division II holding in *M.G. v BISD* denied liability for school districts where the administration failed to take reasonable actions in light of known circumstances. The Supreme Court has a duty to resolve conflicts within the Court of Appeals. If one division were required to defer to the decisions of another division, there would be no need for such a rule. [RAP 13.4(b)(2)] *Matter of Arnold* 190 Wash.2d 136, 410 P.3d 1133 (2018).

Where a conflict arises in jurisprudence of the appellate district courts, any trial court may choose the decision it finds most convenient or persuasive, resulting in further ambiguity. *Sears v Morrison* 76 Cal.App.4<sup>th</sup> 577, 90 Cal.Rptr.2d 528 (3<sup>rd</sup> Dist 1999) M.G. respectfully requests the Washington State Supreme Court accept review and issue a decision on the issues. Review is merited pursuant to RAP 13.4(b)(2).


#### **F. CONCLUSION**

This Court's review of Division II's unpublished opinion is imperative for Section 504 students in public school districts in Washington State. The Court should review the record (or in this case, the *purposeful* lack thereof by the SBM and its counsel) and make a decision based on the merits, not reject the case on a mere technicality.

This document contains 3095 words, excluding the parts of the document exempted by RAP 18.17.

Dated : August 2, 2024

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below, I electronically delivered a true and accurate copy of M.G.'s *Petition For Review* in Court off Appeals, Division II Cause No. 358383-6-II to the following:

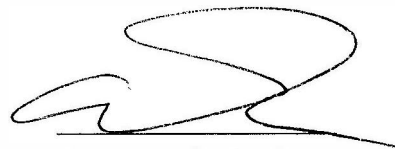
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Date: August 2, 2024, Bainbridge Island, Washington.

A handwritten signature in black ink, appearing to be 'Marcus Gerlach', written over a horizontal line.

Marcus Gerlach  
WSBA #33963

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## APPENDIX A

July 16, 2024

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

M.G.

No. 58383-6-II

Appellant,

v.

BAINBRIDGE ISLAND SCHOOL  
DISTRICT, A Municipal Corporation,  
CHRISTINA HULET, ROBERT  
CROMWELL, MARK EMERSON, SANJAY  
PAL, District Directors AND WASHINGTON  
OFFICE OF SUPERINTENDENT OF  
PUBLIC INSTRUCTION, A Public Agency,

UNPUBLISHED OPINION

Respondents.

CRUSER, C.J.—Marcus Gerlach filed a harassment, intimidation, or bullying (HIB) incident report form (HIB complaint) with the Bainbridge Island School District on behalf of his son, MG. The HIB complaint alleged that MG was the target of multiple incidents of harassment at Bainbridge High School (BHS) between December 2019 and March 2021. In the HIB complaint, Gerlach asserted that multiple teachers, school and district officials, and members of the Bainbridge Island School Board, failed to uphold district policy in allowing harassment and bullying to occur. In response to the complaint, the district hired a third party to investigate all of the allegations that Gerlach raised. The investigation culminated in a detailed report, which ultimately found that the allegations were not credible and no harassment, bullying, or policy violations had occurred. The district agreed with the report, finding the allegations were not

credible and no policies were violated. Gerlach, on behalf of MG, appealed to the board which affirmed the district's findings. Gerlach then appealed to the superior court.

The superior court reviewed the board's decision de novo and found that MG's allegations were not supported by the evidence. The court affirmed the district's and the board's finding that no harassment or bullying occurred. MG now appeals to this court. We sit in the position of the superior court, meaning that we review the board's decision, not that of the superior court. Because this case involves an appeal from a decision made by an administrative agency acting in an administrative capacity, the applicable standard of review is whether the board acted arbitrarily, capriciously, or contrary to law. However, MG assigned error and made argument about only the actions of the superior court, ignoring the board's decision. Because MG failed to assign error to or make any argument about the board's decision, we are unable to review the merits of MG's appeal. As such we decline to reach the merits of the case.

## FACTS

### I. HIB COMPLAINT

In March 2021, Marcus Gerlach<sup>1</sup> (MG's father and attorney) filed an HIB complaint with the district. In the complaint, Gerlach alleged four incidents of harassment and bullying. First, Gerlach alleged that two students stalked and sexually harassed MG during an afterschool club. Then, approximately two months after the afterschool club incident, a different student (who was not involved in the first incident) alleged that MG had harassed her. According to Gerlach, these

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<sup>1</sup> When Gerlach filed the HIB complaint on MG's behalf, he was acting as MG's father rather than MG's attorney. As such, discussion of the complaint refers to Gerlach as the primary actor. Discussion of the appeal to the superior court and the subsequent appeal to this court will refer to MG as the primary actor, as he is the named plaintiff and appellant and Gerlach is officially acting in his capacity as MG's attorney throughout court proceedings.

accusations were made in retaliation for the afterschool club incident. Next, according to the complaint, approximately one year after the afterschool club incident and alleged retaliation, MG was the target of a cyberbullying attack on social media. Gerlach claimed that the social media posts aimed to interfere with MG's academic and extracurricular performance. Finally, according to the complaint, BHS students reported MG's conduct to the college that MG planned to attend in an effort to sabotage his academic career.

In addition to outlining the alleged instances of harassment and bullying against MG, Gerlach raised a number of complaints regarding how the harassment was handled by teachers, district officials, and board members. According to Gerlach, because of the shortcomings and failures of BHS teachers, the afterschool club sponsor, associate principals, and the district at large, MG had to endure uncomfortable and unfair situations in addition to the alleged harassment. Gerlach closed his complaint by requesting a discussion regarding "a mutually agreeable neutral, third-party to investigate the alleged retaliation against [MG] . . . and provide a comprehensive report" to Gerlach. Clerk's Papers (CP) at 1580.

## II. INVESTIGATION & OUTCOME

The district hired Jeffery Ganson to investigate the allegations that Gerlach raised in his HIB complaint. Ganson wrote a detailed 21-page report summarizing the complaint, the records he reviewed, and the interviews he conducted. Ganson found that Gerlach's allegations lacked factual support and were not credible.

The deputy superintendent of the district wrote to Gerlach in September 2021, informing him of the results of the investigation. Based on the results of the investigation, the district found that Gerlach's factual assertions were not credible and that no policy violation had occurred.

### III. PROCEDURAL HISTORY<sup>2</sup>

Gerlach, on behalf of MG, appealed the district's decision to the school board. The board affirmed the district's finding that Gerlach's factual assertions were not credible and that no violation of policy occurred. MG then appealed to the superior court. The superior court reviewed the board's decision de novo and affirmed the board's decision. MG now appeals to this court.

### ANALYSIS

#### I. STANDARD OF REVIEW

MG states that "[w]hen reviewing an administrative decision, the Court of Appeals sits in the same position as the superior court." Br. of Appellant at 41. He reiterates this position in his supplemental brief, stating that we must review the board's decision.

The district agrees that we sit in the same position as the superior court, explaining that where an appellant appeals the decision of a school board first to a superior court and then to an appellate court, "the Appellate Court does not defer to the Superior Court's rulings, but rather, stands in the shoes of the Superior Court reviewing the school district's decision on the administrative record under the controlling standard of review." Resp. Br. of Bainbridge Island Sch. Dist. at 19 (citing to *Porter v. Seattle Sch. Dist. No. 1*, 160 Wn. App. 872, 879, 248 P.3d 1111 (2011)).

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<sup>2</sup> In his petition for review at the superior court, MG named the Office of Superintendent of Public Instruction (OSPI) as a party to the appeal. However, the superior court granted a motion to dismiss OSPI as a party on April 7, 2023. MG does not raise arguments in his opening brief against the superior court's order dismissing OSPI as a party. We agree with OSPI that OSPI is not a party in this appeal, as the superior court dismissed OSPI from the case and MG waived any issue involving OSPI by failing to assign error to the superior court's order in his opening brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.3d 549 (1992).

We agree with the parties that we stand in the same position as the superior court and that we review the board's decision, not the superior court's decision. This is in accord with *Porter*, 160 Wn. App. at 879, as well as *Mercer Island School District v. Office of the Superintendent of Public Instruction*, 186 Wn. App. 939, 960, 347 P.3d 924 (2015), and *City of Seattle v. Public Employment Relations Commission*, 160 Wn. App. 382, 388, 249 P.3d 650 (2011).<sup>3</sup>

## II. MG'S ARGUMENTS

Despite agreeing that we sit in the same position as the superior court and that we review the decision of the board, MG confusingly focuses all of his assignments of error and arguments on the decision of the superior court. He does this in spite of repeatedly asserting that our review is "de novo." Br. of Appellant at 19; Second Reply Br. of Appellant at 25; Suppl. Br. of Appellant at 11-12. MG failed to assign error to the board's decision and fails to include any argument related

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<sup>3</sup> In *City of Seattle*, Division One of this court explained that "[i]n reviewing an agency's order, the appellate court sits in the same position as the superior court. Review is therefore limited to the record of the administrative tribunal, not that of the trial court." 160 Wn. App. at 388 (footnotes omitted). Two cases involving school board decisions affirmed this understanding of the appellate court's role. *Porter*, 160 Wn. App. at 879 (holding that in an appeal challenging a school board's decision to implement new text books, the appellate court "stands in the same position as the superior court"); *Mercer Island Sch. Dist.*, 186 Wn. App. at 960 (holding that the appellate court stands in the shoes of the superior court in reviewing a school board's finding that evidence did not support allegations of racial harassment against a student).

specifically to the board's decision.<sup>4</sup> This failure makes us unable to review the merits of MG's claims.

#### A. Legal Principles

Rule 10.3 in Washington's Rules of Appellate Procedure (RAP) governs the content that parties must include in their briefs. In relevant part, it requires parties to include "a separate concise statement of each error," and present "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(4), 10.3(a)(6). "The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." RAP 10.3(g).

The supreme court explained in *State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995), that

[i]n a case where the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the Court is not greatly inconvenienced . . . there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue.

#### B. Application

MG acknowledges and argues that we sit in the same position as the superior court in reviewing the administrative decision, and asserts that we should review the administrative

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<sup>4</sup> Rather than assigning error to decisions made by the board, MG assigns error to the superior court's dismissal of school board members, the judge's decision not to recuse herself from the case, and the court's denial of MG's motion to compel a complete record, including Zoom transcripts. Because this court stands in the same position as the superior court, and our review is limited to the whether the board acted arbitrarily, capriciously, or contrary to law, we do not reach MG's arguments regarding the superior court's decisions on recusal, dismissal of school board members, and availability of discovery. See *City of Seattle*, 160 Wn. App. at 388; *Porter*, 160 Wn. App. at 879-80; *Francisco v. Bd. of Dirs. of Bellevue Pub. Sch., Dist. No. 405*, 85 Wn.2d 575, 578-79, 537 P.2d 789 (1975); *Haynes v. Seattle Sch. Dist. No. 1*, 111 Wn.2d 250, 254-55, 758 P.2d 7 (1988).

decision “de novo.” Br. of Appellant at 19, 31, 41. But because MG does not inform us how he believes the board erred, his brief does not comply with the rules set out in RAP 10.3.

“In a case where the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the Court is not greatly inconvenienced and the respondent is not prejudiced,” an appellate court can consider arguments by an appellant who fails to properly assign error. *Olson*, 126 Wn.2d at 323. Such is not the case here, however. MG’s arguments lack clarity and focus exclusively on the decision of the superior court, which we do not review.

MG assigns error to the court orders from the superior court regarding the dismissal of individual respondents, and the denial of motions to compel, a motion for sanctions, and a motion to disqualify the superior court judge. His five principle assignments of error are predicated on decisions of the superior court, not the board. The remaining assignments of error focus on the findings of fact and conclusions of law made by *the superior court*. MG introduces his assignments of error regarding specific conclusions of law by stating that “[t]he COL failed to cite a case or a legal standard to support the COL. BISO [Bainbridge Island School District], SBM [School Board Members] and [Judge] Adams [the superior court judge] erred in concluding the following . . . .” Br. of Appellant at 8. However, merely including a sentence saying that the district and the school board “erred” without following it up with argument about *how* the board erred is not sufficient to warrant our review. *See* RAP 10.3(a)(4), 10.3(a)(6).

To the extent that MG makes any argument related to the decision of the board, he does so by attacking how the board and district weighed the evidence before them and evaluated the credibility of witnesses. However, the board’s credibility determinations and weighing of evidence



are not reviewable. “We do not weigh witness credibility or substitute our judgment for the agency’s findings of fact.” *Goldsmith v. Dep’t of Soc. & Health Servs.*, 169 Wn. App. 573, 584, 280 P.3d 1173 (2012).

Moreover, the majority of MG’s references to errors made by the district or board are made under the umbrella of his arguments regarding how the superior court erred in reaching certain findings of fact and conclusions of law. Additionally, when MG does reference the decision of board, he often fails to provide sufficient citations to the record and/or to appropriate authority.<sup>5</sup>

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<sup>5</sup> As an example, in arguing that the superior court erred in reaching the conclusion that the record “supports the School Board’s decision that no HIB had occurred,” MG states that district officials “acted with deliberate indifference when [the district’s] female students disrupted MG’s right to a free appropriate and public education.” CP at 596; Br. of Appellant at 57-58. He goes on to state that “[t]he sexual harassment of M.G. from 2019 to 2021 was ‘sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services activities or opportunities offered by a school district.’ ” Br. of Appellant at 59 (quoting *Mercer Island*, 186 Wn. App. at 964). Although he cites to *Mercer Island* and to *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986), he does not tether these legal citations to anything in the record that would support his claims.

In another instance, while arguing that the superior court improperly dismissed individual board members from the case, MG states that the district “had actual knowledge of the severe, persistent and pervasive sexual harassment of M.G. and acted with deliberate indifference,” and claims that members of the board “breached their fiduciary duties.” Br. of Appellant at 18. For support, he cites to unsupported conclusions from *his own brief* filed with the superior court in opposition to respondents’ motion to dismiss individual district officials and board members from the case.

In sum, we cannot review MG's appeal without putting our thumb on the scale and raising assignments of error on his behalf and making his arguments for him. We decline to do so.<sup>6</sup>


#### CONCLUSION

We decline to review the merits of MG's claims because he focuses his assignments of error and arguments on the decision of the superior court rather than of the board. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
CRUSER, C.J.

We concur:

  
GLASGOW, J.

  
CHE, J.

<sup>6</sup> We asked the parties to provide supplemental briefing on several questions related to the standards governing our review, the primary question being whether the board was acting in an administrative or quasi-judicial capacity in making its decision. The district persuasively argued that the board acted in an administrative capacity, requiring us to review the board's decision for whether it was arbitrary, capricious, or contrary to law. *See Francisco*, 85 Wn.2d at 578-80; *Haynes*, 111 Wn.2d at 254-55; *Porter*, 160 Wn. App. at 879-80. MG largely failed to answer the questions we asked, and with regard to the primary question he simply stated that "[t]he [p]etition for [r]eview was clearly judicial," and focused on the fact that the orders from the superior court were judicial in nature, rather than addressing the board's decision. Suppl. Br. of App at 5-7. Because we are unable to review the merits of MG's claims, however, we need not address this question.

## APPENDIX B

No. 583836  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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M.G.

Petitioner/Appellant

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT, BAINBRIDGE ISLAND SCHOOL  
BOARD MEMBERS: CHRISTINA HULET, ROBERT CROMWELL, MARK  
EMERSON, SANJAY PAL AND THE WASHINGTON OFFICE OF  
SUPERINTENDENT OF PUBLIC INSTRUCTION

Respondents/Appellees

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BRIEF OF APPELLANT, M.G.

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## **I. INTRODUCTION BY PETITIONER, M.G.**

The Petitioner, M.G., is a male student who attended high school in the Bainbridge Island School District (“BISD”), from 2017 through 2021. M.G. was diagnosed with developmental delay circa 2007 and obtained an Individualized Education Plan (“IEP”) before qualifying for accommodations under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) (Clerk Papers “CP” 78).

Despite the disability, M.G. qualified for a scholastic competition. On March 8, 2019, M.G. was threatened with physical violence by a female student. (CP 94) BISD teacher Charisa Moore (“Moore”) had actual notice of the harassment, intimidation and bullying (“HIB”) and failed to discipline a female student. Moore was previously involved in litigation regarding BISD. (CP 10)

Between October 2019 through December 2019, female students targeted M.G. with false, malicious and defamatory claims like “F\*ck-boy” and “Sl\*t-boy.” Some comments were posted on the internet. Moore was on actual notice of the sexually explicit HIB. On December 6, 2019, Moore threatened to remove a female student from BISD’s after-school club, Health Occupation Students of America (“HOSA”) (CP 89). On Saturday, December 7, 2019, Moore contacted M.G.’s parents to report the sexual HIB. (CP 66)

The female students wrote an apology letter to Moore, not M.G. acknowledging their disruption of the learning environment. (CP 69) BISD's notes confirmed "fabricated stories re: M.G. that were posted" "C [Moore] said that's harassment.". (CP 71) BISD/ Moore failed to properly discipline the female students. BISD's Title IX officer, Erin Murphy ("Murphy") filed an insurance claim with BISD's carrier, (CP 36) Washington Schools Risk Management Pool ("WSRMP"), but failed to collect evidence or investigate in 2019. Murphy served on WSRMP's Board (CP30).

Absent meaningful discipline, several female BISD students targeted M.G. with additional sexual harassment in 2021. On January 23, 2021 two HOSA officers alerted Moore to new false claims. Moore again failed to stop circulation of the newly false claims. (CP 370) On January 23, 2021, BISD graduate, Eleanor Wilson offered to write stories about M.G. and "compose a letter to the school with your demands." (CP 370) On January 24, 2021, several female BISD students posted false, malicious and defamatory accusations regarding M.G. via the internet (cyber-harassment). This time M.G. was one of several Section 504 boys targeted with false claims. The false claims were designed to promote a nonexistent rape culture on Bainbridge Island (CP 371).

BISD locked the publishing student's account (CP270) and advised the parent of violations to BISD's technology platform policies. (CP272) The alleged cyber-stalker's father met with BISD staff. (CP122,127) The parents of the cyber-stalker were friends with BISD's Superintendent, Peter Bang-Knudsen ("PBK"). BISD refused to provide contact information for the alleged cyber-stalker to the police. (CP 268) The police failed to demand the information and to conduct a proper investigation, even after the alleged cyber-stalker demanded to know what laws she was violating. (CP 276) BISD acted with deliberate indifference. In March 2021, M.G. filed HIB, amended HIB (AHIB) incident Report Forms ("IRF").

BISD's Murphy tried to investigate the 2019 sexually discriminatory HIB in 2021. BISD also hired investigator Jeff Ganson ("Ganson") to investigate M.G.'s 2019-2021 HIB. Ganson was a WSRMP defense attorney. In order to obtain a fair, neutral and impartial investigation M.G. hired Michael Necochea Security and Investigations ("MNSI") to investigate M.G.'s HIB. MNSI interviewed M.G. circa May 2021. MNSI identified several state and BISD Policy violations. (CP 521-531) MNSI prepared a report for BISD and requested a formal investigation of BISD's alleged violations of their own Policies and Procedures (P&P). (CP 349)

M.G. declined an interview with Ganson based upon *Mercer Island Schl Dist v OSPI* 186 Wash.App. 939, 957, 347 P.3d 924 (2015) as Ganson represented Mercer Island School Dist. in 2015. On September 9, 2021, Ganson used his notes to prepare a report, which failed to find any P&P violations by BISD. (CP 502) On September 10, 2021, Murphy upheld Ganson's decision. (CP 189) M.G. appealed Murphy's/ Ganson's decision. On September 23, 2021, PBK upheld Murphy's/Ganson's decision. (CP 192) M.G. appealed PBK's decision. On October 13, 2021, BISD's School Board Members ("SBM") were represented by BISD's old law partner. M.G. objected to the school board's attorney, as he was a law partner of BISD's attorney.(CP 195-197) On October 13, 2021, the SBM failed to record M.G.'s Zoom appeal hearing. (CP 203) On October 20, 2021, the SBM exonerated BISD (CP 385).

On November 18, 2021, M.G. filed a Petition for Review of Administrative Decision (CP 1, 376). On December 7, 2021, BISD filed an incomplete record. On December 14, 2021, M.G. Filed a Notice of Incomplete Record.(CP 2) On January 7, 2021 the Kitsap County Superior Court assigned Judge Michelle Adams ("Adams") to the case. (CP 7) Adams was married to a Washington State Public School District ("WSPSD") employee, insured by WSRMP.

## **II. ASSIGNMENT OF ERRORS AND PERTAINING ISSUES**

M.G. assigns error to Adams' Court Orders: A. Dismissal; B. Sanctions; C. Compel; D. Disqualification; E. Compel Notes; and the Findings of Fact and Conclusions of Law, as set forth below:

- A. Adams dismissed individual SBM despite RCW 28A.645.010.

**Issue-** Can Adams disregard the plain and unambiguous language of RCW 28A.645.010 in favor of BISD/WSRMP?

- B. Adams denied a Motion for Sanctions to collect evidence.

**Issue-** Did the law require sanctions against BISD for the failure to preserve evidence that established negligence/ bad faith?

- C. Adams denied a Motion to Compel a Complete Record.

**Issue-** Was Adams required to comply with the plain language of RCW 28A.645.020 and require BISD's complete transcript?

- D. Adams denied a Motion to Disqualify under CJC rules.

**Issue-** Was disqualification required under CJC rule 2.11 when Adams' impartiality might be/was reasonably questioned?

- E. Adams denied a Motion to Compel inclusion of Ganson's notes.

**Issue-** Can Ganson's biased notes be excluded from the record?

## **F. FINDINGS OF FACT (“FOF”).**

Adams failed to cite a FOF. Substantial evidence failed to support FOF.

1. **FOF #2:** Moore was made aware of social media postings purported to have been made by M.G. toward a female student.  
**Issue-** Did substantial evidence even support FOF #2 that M.G. ever “purported” to make any derogatory posting towards any female student at any time from 2017 to 2021?
2. **FOF # 3:** Moore understood that the situation was resolved.  
**Issue-** Did substantial evidence support FOF # 3 that Moore ever declared any understanding regarding any resolution?
3. **FOF #19:** The amended complaint referred to BISD Board Policy and Procedure 3706.  
**Issue-** Did substantial evidence in the complaint establish a sexual harassment complaint against BISD’s female students who targeted M.G., a male, Section 504 student?
4. **FOF #21:** M.G. alleged Murphy had a conflict of interest due to the fact that she was an Executive Board member of WSRMP.  
**Issue-** Did Murphy have a conflict of interest investigating BISD Title IX claims while simultaneously serving a WSRMP Executive Board member that insured BISD’s Title IX claims?

5. **FOF #24:** Ganson had a conflict of interest because he previously served as WSRMP's defense attorney [*Mercer Is. Schl Dist. v OSPI*]) and Ganson's own notes demonstrated bias.  
**Issue-** Was BISD required to use a fair, neutral, impartial and unbiased investigator to investigate HIB claims against BISD?
6. **FOF # 25:** Ganson issued a report finding that no HIB had occurred and there was no violation of BISD's P&P.  
**Issue-** Did BISD/WSRMP's Ganson protect BISD/WSRMP?
7. **FOF #26:** Murphy issued a decision based on Ganson's report concluding that the allegations in the HIB was not supported.  
**Issue-** Did Murphy include Ganson's notes in the decision?
8. **FOF # 28:** PBK issued a decision upholding Murphy's decision, based on Ganson's report that there was no violation of BISD's P&P [to protect BISD/WSRMP from liability].  
**Issue-** Did PBK include Ganson's notes, which established a bias for BISD and prejudice against M.G., in the decision?
9. **FOF # 32:** SBM issued a decision upholding Murphy's, PBK's and Ganson's decision that there were no P&P violations.  
**Issue-** Did SBM's decision include Ganson's notes or Ganson's report that established a bias for BISD and prejudice against M.G. in the decision drafted by BISD's old law partner?



**G. CONCLUSIONS OF LAW (“COL”).**

The COL failed to cite a case or a legal standard to support the COL. BISD, SBM and Adams erred in concluding the following:

1. **COL #3:** A reasonable and objective person reviewing M.G.’s HIB would conclude that the complaint was for cyber-bullying.

**Issue-** Did M.G.’s HIB make multiple references to sexual harassment of M.G. by female BISD students and did the Declaration of Emily Neer confirm that BISD only had one IRF for all cyber-bullying, sexual harassment and harassment?

2. **COL #4:** M.G. was estopped and precluded from arguing that M.G.’s HIB IRF was a sexual harassment complaint. Nothing in the record indicated that M.G. objected to processing the IRF under BISD Policy 3706 instead of Policy 3700.

**Issue-** Is there a legal doctrine or case law allowing BISD, SBM and Adams exclude evidence in the form of a declaration by Emily Neer that BISD had only ONE IRF document in 2021, which was used to address all complaints against BISD for sexual harassment, harassment, cyber-harassment, stalking, defamation, bullying and intimidation?

3. **COL #6:** BISD filed and certified an allegedly complete record pursuant to RCW 28A.645.020 that excluded any evidence from the 2019 sexual harassment of M.G., as well as a complete copy of Ganson's 2021 notes, which established bias, prejudice and partiality against M.G and in favor of BISD/WSRMP.

**Issue-** Should BISD, SBM and Adams improperly exclude unfavorable documents from the record, which were created and relied on by BISD before SBM made the October 20, 2021 decision, in an effort to conceal BISD's deliberate indifference?

4. **COL #8:** The Court concluded that M.G.'s allegations concerning the 2019 incident was not supported by evidence, after Murphy filed a WSRMP claim but failed to collect evidence that supported the 2019 sexual harassment HIB.

**Issue-** Did the Court irrationally and impermissibly favor BISD/WSRMP with Court Orders, by concluding that BISD/WSRMP's Murphy did not have an obligation as BISD's Title IX Officer to collect evidence to establish M.G.'s claims and effectively preclude sanctions against BISD/WSRMP after Murphy failed to collect evidence to establish M.G.'s claims?

5. **COL #9:** There was no violation of BISD's P&P per the SBM.

**Issue-** When the SBM relied upon BISD's old law partner to advise the SBM against making a decision that would adversely affect BISD/WSRMP, did the SBM engage in an impermissible conflict of interest by employing BISD's old law partner and also improperly relying upon Ganson's biased notes, Murphy's conflicting employment with WSRMP and PBK's bias in favor of a family friend [the alleged cyber-stalker]?

6. **COL #10:** M.G. refused to be interviewed by WSRMP's Murphy and Ganson during BISD's/WSRMP's investigation.

**Issue-** Does case law state, "If the District had truthfully informed them [parent] of its relationship [with investigators]... the parents may have declined to allow their son to be interviewed by the coordinator or attorney investigator"?

7. **COL # 11:** Murphy did not have a conflict of interest because she was both a WSRMP Executive Board member and BISD's Title IX Officer at the exact same period in time.

**Issue 1-** Did Murphy have a conflict of interest when Murphy filed a 2019 WSRMP claim, but did not investigate until 2021?

Issue 2- Did Murphy demonstrate a conflict of interest when Murphy failed to collect any evidence in 2019 of the sexual harassment of M.G. until 2021?

**Issue 3-** Could BISD's Murphy separate her duties as BISD's Title IX officer and WSRMP Executive Board member, when Murphy simultaneously was employed at BISD and WSRMP?

**Issue 4-** Did Murphy abandon Murphy's duties as BISD's Title IX Officer when Murphy adopted Ganson's biased report that omitted relevant facts and reached unjustified conclusions?

8. **COL # 12:** PBK was not biased or had a conflict of interest because PBK's son was the alleged cyber-stalker's prom date.

**Issue-** If PBK was family friends with the alleged 2021 cyber-stalker, should PBK have recused himself from the decision-making process to avoid the appearance of impropriety?

9. **COL # 13:** SBM Sanjay Pal's wife, Krista Pal, was a BISD counselor, who interviewed the alleged cyber-stalker's father.

**Issue-** Did the appearance of fairness require SBM Sanjay Pal to recuse himself from the decision-making process when Sanjay Pal's wife earned community income as an employee of BISD and was integral in BISD's cyber-stalking investigation?

10. **COL #14:** Adams' stated "Ganson's investigation was completed in accordance with BISD P & P and was not biased." Ganson was employed by WSRMP in *Mercer Is. Schl. Dist* and was biased. The investigation omitted relevant facts and reached unjustified conclusions in *Mercer*. Ganson's Notes were biased.

**Issue 1-** Did Ganson's law partner investigate the Mercer Island HIB and omit relevant facts and reach unjustified conclusions?

**Issue 2-** Did Ganson's own notes make biased comments like:

"Galaxy Brain Bullshit" "Just tons of BS" "outlandish speculation" "total speculation" "not harassing in any way" "not stalking at all" "no demonstrable harm" "no evidence of falsity" and "circular nonsense" while omitting relevant facts and reaching unjustified conclusions for BISD?

**Issue 3-** Did Ganson's own notes demonstrate bias and partiality towards BISD/WSRMP and prejudicial against M.G.?

11. **COL # 15:** BISD's SBM conducted the October 13, 2021 hearing in compliance with P&P and Washington law.

**Issue-** Does the law allow a board to engage in multiple conflicts of interest, concealment of documents and records, falsification of evidence and prejudice/bias against a male, Section 504 student and fail to record a Zoom hearing/meeting?

12. **COL # 16:** M.G. had an opportunity to argue that the investigation was not properly conducted and that the investigators had a conflict of interest, or were biased.

**Issue-** If the Court denied two Motions to Compel a Complete Record and deliberately excluded Ganson's notes from the record, could M.G. still argue that the investigations were not properly conducted and the investigators had a conflict of interest or were biased and prejudiced against M.G.?

13. **COL # 17:** The Court concluded that a review of the incomplete record supported SBM's decision that no HIB occurred.

**Issue-** Did the Court properly conclude that 1) evidence was not necessary to make a complete record, 2) the sexual harassment hearing did not need to be recorded pursuant to 34 CFR 106, 3) the hearing transcript was not required under RCW 28A.645.020, 4) Murphy, PBK and Ganson did not have conflicts of interest and 5) Ganson's biased, prejudicial and partial notes should be excluded because they were embarrassing to BISD/ WSRMP - resulting in SBM's decision which cleared BISD/WSRMP on **any** violations of P&P?

14. **COL # 18:** The board did not conduct a secret after-hearing after the board announced that the hearing was concluded.

**Issue-** Can SBM's attorney [old law partner of BISD's attorney] conduct an after-meeting hearing with BISD staff, BISD's attorneys, BISD's witnesses and SBM after terminating the Zoom with M.G. and then deny the existence of the meeting?

15. **COL # 19:** M.G.'s October 13, 2021 sexual harassment appeal hearing did not need to be recorded or transcribed under RCW 28A.645.020, or Code of Federal Regulations ("CFR").

**Issue-** Did state law and federal law require a recorded sexual harassment appeal hearing?

16. **COL # 20:** SBM [allegedly] properly addressed M.G.'s pre-hearing motions.

**Issue 1-** Can BISD SBM's attorney [old law partner of BISD's attorney] fail to issue a pre-hearing Order on pending Motions to disqualify a decision-maker who has a conflict of interest?

**Issue 2-** Should SBM's decision-making process, including their attorney, appear to be fair, impartial and unbiased?

**Issue 3-** Must all SBM be fair, impartial and unbiased in sexual harassment appeal hearing proceedings?

### III. STATEMENT OF THE CASE / PLEADINGS

“Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence: nor is the law less stable than the facts.”<sup>1</sup> The facts in this case are simple, consistent and uncontroverted by all. BISD, WSRMP, Moore, Murphy, PBK, Ganson, SBM and Adams all ignored *relevant* facts and reached *unjustified* conclusions [Mercer] in order to protect BISD/WSRMP from all P&P violations. The facts established *deliberate indifference* by BISD’s/WSRMP’s agents.

In 2019, BISD acted with deliberate indifference regarding the repeated and targeted sexual harassment of M.G. by female BISD students.(CP 420-443) Without fear of discipline from administration, in 2021 female students targeted several male, Section 504 students with false, malicious and defamatory accusations of sexual assault and rape in order to promote a non-existent rape culture on Bainbridge Island (CP 371) and possibly secure grant funding for a non-profit corporation and compensate students for their efforts. Mason, Pierce and King Counties all sponsor non-profit Section 503(c) organizations with public funds to advocate for sexual assault awareness.

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<sup>1</sup> John Adams December 3-4 1770



BISD's deliberate indifference allowed female students to target a male, Section 504 student with discrimination that was sufficiently severe, pervasive and objectively offensive. The false, malicious and defamatory sexual harassment deprived M.G. of access to the educational opportunities or benefits provided by the school. The following facts are undisputed in this litigation.

In March 2019, M.G. was targeted with threats of physical violence. (CP 369) BISD's Moore had actual notice. From October 2019 through December 2019 M.G. was sexually harassed. (CP 452) BISD/ Moore had actual notice. In 2020, BISD administration knew the stories about M.G. were fabricated. (CP 71) In January 2021, M.G. and several other male, Section 504 boys were targeted with false claims of sexual assault and rape, to promote a non-existent rape culture on Bainbridge Island. (CP 370-372).

BISD's teachers, administrators and staff knew the girls used BISD technology to publish false, malicious and defamatory claims about M.G. (CP 184) BISD relied upon a compromised Title IX Officer/WSRMP investigator, biased superintendent to contest the undeniable claims of sexual harassment. BISD/SBM acted in bad faith in order to subvert a fair process and investigation. (CP 62-65)

#### IV. ARGUMENT

The errors by the Court/Adams will be reviewed in order:

##### A. Improper Dismissal of Individual SBM By Adams

On October 13, 2021, Mark O'Donnell ("O'Donnell") represented BISD [PBK, Murphy, Moore]. SBMs were represented by O'Donnell's old law partner, Curtis Leonard ("Leonard"). (CP 228) On October 20, 2021, Leonard assisted SBM to "unanimously affirm the District's decision as reflected in the Superintendent's communication" [denial of BISD's P&P violations]. (CP 376) Leonard did not withdrawal as counsel of the SBM at any time.

On December 13, 2021, O'Donnell filed a notice of appearance for BISD and individual SBM [Christina Hulet, Robert Cromwell, Mark Emerson and Sanjay Pal]. On December 23, 2021, BISD filed a Motion to Dismiss the Individual SBMs. M.G. Opposed. (CP 9)

On January 6, 2022, Judge Adams was pre-assigned to the case. (CP 7) In the pre-assignment, Adams concealed her marriage to a WSPSD employee insured by WSRMP from M.G.. (CP 411)

On January 12, 2022, M.G. Opposed the Dismissal based upon:  
1) the bad faith of the (CP 1-15) SBM's failure to comply with P&P; 3) a sham investigation; and 4) a spurious decision. (CP18)

BISD P&P 1005 required SBM to “endeavor to stay abreast of issues...”and to “perform this function effectively, board members will familiarize themselves with district programs and operations.” (CP 10) SBM failed to keep abreast of sexual harassment at BISD.

School board meetings were required to be recorded. SBM did not record M.G.’s October 13, 2021 sexual harassment appeal hearing. BISD had actual knowledge of the severe, persistent and pervasive sexual harassment of M.G. and acted with deliberate indifference. (CP 11) SBM breached their fiduciary duties [RCW 28A.150. 230]. (CP 10) SBM violated their Oaths of Office (CP 51-55) when the alleged cyber-stalker escaped investigation because she was a prom date of the Superintendent’s son.

SBM’s bad faith and conflicts included: a) allowed a fully-compromised investigation process; b) violated federal law/CFRs by not recording; and c) failed to preserve evidence. (CP 57-60)

Adams ignored SBM’s multiple acts of bad faith by BISD staff, conflicts of interest by investigators and violations of the Oaths of Office by SBM. The Court of Appeals (“COA”) must reverse Adam’s improper Dismissal Order of February 4, 2022 and Adams’ erroneous February 14, 2022 Denial of M.G.’s Motion for Reconsideration that improperly quoted the RCW and dismissed individual SBMs. (CP 127 -139)

This court must apply de novo review concerning statutory interpretation and dismissal. *State v Evergreen Freedom Fund* 192 Wn.2d 782, 789-790, 432 P.3d 805 (2019), *cert denied*, 139 S.Ct 2647 (2019); *Tenore v AT&T* 136 Wn.2d 322, 329-330, 962 P.2d 104 (1998). Adams failed to understand that Motions to Dismiss should be granted sparingly and with care and only in the unusual case in which plaintiffs fail to include allegations on the face of the complaint. “A dismissal is appropriate only if it appears beyond doubt that the plaintiff cannot prove any set of facts, which would justify recovery.” *Tenore v AT&T* 136 Wn.2d 322 (1998); *Deegan v. Windermere Real Est.* 197 Wn. App. 875, 291 P.3d 140 (2017).

Adams had facts that established bad faith by the SBM. Adams should have regarded the Petitioner’s allegations in the Petition as true and may consider hypothetical facts not included in the record. [*Id.*] Any hypothetical situation conceivably raised by the Petition defeats a motion to dismiss if it is legally sufficient to support petitioner's claim. *Id.* The Court need not find that any support for the alleged facts exist or would be admissible in trial, *Contreras v. Crown Zellerbach Corp.*, 88 Wn.2d 735, 742, 565 P.2d 1173 (1977). SBM’s Motion to Dismiss should have been denied based on bad faith. (CP132). Adams violated the statute/RCW to dismiss SBM.

Adams also ignored RCW 28A.150.230, which guaranteed individual SBM be held accountable. (CP 10) Adams and SBM disregarded *Mercer Is. Schl Dist v OSPI* 186 Wash.App. 939, 347 P3d 924 (2015). (CP 432) SBM failed to convene M.G.'s Section 504 team following the sexual harassment pursuant to the P&P.

BISD/SBM cited RCW 4.27.470 as the authority to dismiss SBM. This non-existent RCW (CP 72) failed to provide Adams with authority to grant SBM's Motion to Dismiss. Adams granted the dismissal because Adams was compromised. Adams was married to a WSPSD employee insured by WSRMP. During the hearing Adams' stated, "The RCW 28A.645.010 doesn't reference school board members specifically, it does reference the school board generally and the Decision was made collectively," (CP 129) On February 4, 2022, the Court erred by reading "collectively" into the statute. (CP 139) Adams failed to apply the plain language of RCW 28A.645.010, which stated: "any decision or order of any school official or board...may appeal the same to the superior court of the county..." In construing a statute, the fundamental objective is to ascertain and carry of the legislature's intent. *Evergreen* 192 Wn.2d at 789. The legislative intent in the RCW was clear.

Where "a statute is clear on its face, its meaning [should] be derived from the language of the statute alone." *Kilian v. Atkinson*, 147 Wash.2d 16, 20, 50 P.3d 638 (2002) (citing *State v. Keller*, 143 Wash.2d 267, 276, 19 P.3d 1030 (2001)); see also *BcdRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004). "Courts should assume the Legislature means exactly what it says" in a statute and apply it as written. *Keller*, 143 Wash.2d at 276, 19 P.3d 1030; see also *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992); *State v. Roggenkamp*, 153 Wash.2d 614, 625, 106 P.3d 196 (2005).

Statutory construction cannot be used to read additional words into the statute. *State v. Chester*, 133 Wash.2d 15, 21, 940 P.2d 1374 (1997). *Densley v. Department of Retirement Systems* 162 Wn.2d 210, 173 P.3d 885 (Wash. 2007). The "plain meaning" is "discerned from all that the Legislature has said in the statute." *Dept of Ecology v Campbell & Gwinn* 146 Wn.2d 1, 11, 43 P.3d 4 (2002). RCW 28A.645.010 clearly stated "any decision or order of any school official." Adams misconstrued and misapplied other language in the RCW "Any person, or persons either severally or collectively aggrieved" and inserted the term "collective" into an unrelated section of the RCW to manufacture new RCW language.

Adams also violated CJC Rule 2.11 by not disqualifying herself in any proceeding in which her impartiality might be reasonably questioned. (CP 395) Adams concealed her marriage and community property income from a WSPSD employee, insured by WSRMP. M.G. never would have consented to allow Adams to preside over the case when Adams' spouse was a WSPSD employee insured by WSRMP. (CP 393) The Preamble to the CJC, stated in part, "An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principal that an independent, impartial and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." "Judges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional lives..." CJC Rule 1.2 reiterates the issues relating to confidence in the judiciary and states in relevant part, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." Adams should have recused herself to avoid the appearance of impropriety. Adams failed to properly recuse herself. (CP 395-396)

B. M.G. Was Entitled To Spoliation Sanctions Against BISD

On January 26, 2022, M.G. discovered that Moore and Murphy failed to collect evidence of the 2019 sexual harassment incidents despite filing a WSRMP claim. BISD admitted that M.G.'s October 13, 2021 sexual harassment appeal hearing was not recorded. BISD ignored M.G.'s valid July 7, 2021 litigation hold. (CP 57-60)

M.G. filed a Motion for Sanctions Against BISD. M.G. stated, "The requested relief would reverse BISB's [SBM] Decision for: Failure to comply with federal and state laws; Failure to enact recent revisions to Title IX rules; Violations of BISB/BISD's P&P; Conflicts of interest with investigators, who were also employed by WSRMP; Discovery rule violations regarding a valid litigation hold; and violations of the Public Records Act ("PRA")." (CP 93)

M.G. asserted, "BISD employees prevented M.G. from obtaining information regarding cyber-stalking attacks." (CP 99) BISD's Kim Rose ("Rose") actually stated in an e-mail "We need to talk in a separate Zoom chat or somewhere that is not a public record."**[emphasis added]** (CP 99) BISD refused to provide documents as part of a PRA request claiming attorney/client privilege between non-attorneys. (CP 99, 121, 123)



M.G. relied upon the holding in *JK v Bellevue Schl Dist (BSD)* \_\_ Wash App \_\_, 500 P3d 138 (2021) to sanction BSD for the deliberate and intentional spoliation of evidence necessary to establish M.G.'s sexual harassment claims against BSD/WSRMP. The Court in *JK* stated, "BSD had spoliated school and bus camera footage." BSD violated J.K.'s valid litigation hold. The Court granted J.K.'s motion for sanctions against BSD and granted default judgment on liability. *J.K.* was similar to M.G.. (CP 99)

The *JK* Court held spoliation was the intentional destruction of evidence with jurisdictions modernly treating the term to encompass a broad range of acts. [*Id*] In deciding whether a sanctionable spoliation occurred, Courts weigh: 1) the potential importance or relevance of the missing evidence, and 2) culpability or fault of the adverse/spoliating party. (citing *Tavai v Walmart* 176 Wn.App. 122, 135, 307 P.3d 811 (2013)). The 2019 HIB evidence was relevant and important to establishing M.G.'s claim against BSD/HOSA's girls. Murphy made a WSRMP insurance claim but deliberately failed to collect evidence of the sexual harassment to M.G. by female BSD students. Murphy also failed to record M.G.'s October 13, 2021 sexual harassment appeal hearing despite being present and a witness for BSD at the hearing. (CP 98)

M.G.'s June 18, 2021 litigation hold specifically required the preservation of all reasonably identified potential evidence in all forms which are reasonably anticipated or reasonably foreseeable. The obligation existed whether or not BISD was formally served with litigation. BISD was specifically instructed to prevent spoliation of potential evidence, like the October 13, 2021 sexual harassment appeal hearing. Adams disregarded the litigation hold.

BISD's O'Donnell and the SBM's Leonard failed to record M.G.'s October 13, 2021 sexual harassment hearing despite being physically present during the Zoom hearing. BISD's attorney actually claimed M.G.'s October 13, 2021 sexual harassment appeal hearing did not need to be recorded or transcribed. (CP 105)

M.G. sought a default judgment against BISD for the deliberate and intentional failure to record M.G.'s October 13, 2021 sexual harassment appeal hearing. (CP 106) The purpose of requested sanctions was to punish and educate BISD. (CP 100) Default judgments are proper when a defendant spoliated evidence, such as computer files [*Gentex Corp v Sutter* 827 F.Supp. 2d 384 (2011)]. Adams denied M.G.'s motion for sanctions without an analysis. Adams refused to comply with *J.K.* because of her conflict.

Case law was clear. The destruction of electronic evidence mandated sanctions. [*State Farm Mut Auto Ins. V. Grafman* 274 F.R.D. 442 (2011)]. The destruction of records required sanctions. [*Peschel v City of Missoula* 664 F.Supp.2d 1137 (2009)]. The loss of a video [hearing video] authorized sanctions. [*Wm Thompson Co v Gen Nutrition Corp* 593 F.Supp.2d 1443 (1984)]. Adams ignored legal precedent because of bias toward WSRMP and WSPSDs.

Adams knew that BISD had no reasonable excuse for not collecting evidence of sexual harassment in 2019, when Murphy filed a WSRMP insurance claim for BISD/WSRMP. (CP 95) Adams knew BISD had no reasonable excuse for not recording M.G.'s Zoom October 13, 2021 sexual harassment appeal hearing. A judge cannot review a hearing without a transcript. Adams reached her conclusions without ever reviewing the October 13, 2021 Zoom sexual harassment appeal transcript. Additionally, Adams knew BISD had no reasonable excuse for not providing M.G. with public records. A party acts willfully when it violates a litigation hold or acts without reasonable excuse. *Magana v Hyundai Motors AM* 167 Wn.2d 570, 584, 220 P3d. 191 (2009); *Smith v Behr Proc Corp* 113 Wn.App. 306, 327-328, 54 P.3d 665 (2002). BISD was aware of the valid litigation hold. (CP 57-60)

BISD took unfair advantage of its spoliation and substantially prejudiced M.G.. (*Peschel v City of Missoula* 664 F.R.D. 442 (2011)) BISD's failure to preserve evidence prejudiced M.G..

BISD claimed there were two harassment forms. During the March 11, 2022 hearing, Adams asked, "Isn't there a different form for sexual harassment?" Adams' confusion was based on BISD's false claim of two different harassment forms. (CP 235, 251) In 2021, BISD had **one** HIB form. On April 1, 2022, Adams denied M.G.'s right to evidence based on a lie. Adams failed to address controlling law in the April 1, 2022 Order denying Sanctions.

M.G. filed a Motion for Reconsideration on March 21, 2022. M.G.'s Motion for Reconsideration included a declaration from Emily Neer, which explained that BISD only had one HIB form for both harassment and sexual harassment. (CP 28) Adams did not read Emily Neer's declaration because on April 5, 2022, Adams issued an Order denying Reconsideration without any analysis.

Adams ignored the declaration of Emily Neer because Adams was married to a WSPSD employee, received community property income from WSPSD and Adams' spouse was insured by WSRMP. Adams was compromised by her marriage to a WSPSD employee.

Adams' conduct and impartiality was reasonably questioned based on her source of community property income. Adams concealed her marriage and community property income from M.G.. (CP 393)

CJC 2.11 required Adams to disqualify herself in proceedings where her impartiality might reasonably be questioned. Adams knew of her clear conflict of interest and hid the conflict to benefit WSRMP/ BISD. Case law was clear. Washington cases have long recognized that judges must recuse themselves when the facts suggest that they are actually or potentially biased. *Diimmel v. Campbell*, 68 Wn.2d 697, 699, 414 P.2d 1022 (1966). It is incumbent upon members of the judiciary to avoid even a cause for suspicion of irregularity in the discharge of their duties. Federal and state constitutions guarantee a trial before an impartial tribunal, be it judge or jury. The court's 1898 decision in *State ex rel. Barnard v. Board of Education* held "[t]he principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts." (*State ex. rel. Barnard v. Bd. of Educ.*, 19 Wash. 8, 17, 52 P. 317 (1898)). In *State v. Madry*, the court also held, "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness." 8 Wn. App. 61, 68,

504 P.2d 1156 (1972). *Tatham v Rogers* 170 Wn.App. 76, 283 P.3d 583 (2012). The Petitioner required a fair, unbiased and impartial judge to review the Petition not a “rubber stamp.” (CP 395, 493)

C. Motion To Compel BISD To Offer a Complete Record

On February 18, 2022, M.G. filed a Motion to Compel BISD Comply with RCW 28A.645.020. Specifically, M.G. requested Adams “grant an Order to Compel BISD to comply with RCW 28A.645.020 and if BISD cannot, to compel BISD to produce witnesses identified by M.G. for questioning as required under 34 C.F.R. §106.45.” (CP158) BISD was required to comply with special requirements under 34 C.F.R. §106.45, regarding sexual harassment complaints. M.G.’s HIB IRFs referenced “sexual harassment” numerous times despite BISD’s false claim that M.G.’s HIB was for only cyber-bullying. False claims like, “F\*ck-boy, SI\*t-boy, rape, sexual assault were clearly more than cyber-bullying, or harassment. Despite copies of M.G.’s HIB IRFs and declaration of Emily Neer, Adams refused to acknowledge that M.G. was sexually harassed by female students at BISD from 2019 to 2021.

M.G. requested documents under the PRA. On September 17, 2021, M.G. requested Ganson's notes. (CP 585) BISD's certification of the record failed to provide Ganson's Notes. Ganson's Notes were produced December 21, 2023. (CP 446)

M.G.'s Motion to Compel was based upon controlling case law and the RCWs. Washington public policy strongly favors early and broad discovery in civil litigation. *Lowy v. Peace Health* 174 Wash.2d 769, 776, 280 P.3d 1078 (2012); *Putnam v Wenatchee Valley Cir* 166 Wn.2d 974, 216 P.3d 375 (2009).

M.G. obtained as many documents from BISD, via the PRA as possible, but BISD continued to delay in production. BISD's "Certification of the Record" was deliberately incomplete.

Adams did not have Ganson's Notes, a transcript of M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing and evidence that should have been collected by Murphy in 2019.

M.G. was entitled to a complete record and accurate transcripts, *Briggs v Seattle Schl Dist* 165 Wn.App. 286, 266 P.3d 911 (2011). The Court in *Briggs* found the district failed to include a variety of parental submissions and exhibits and ordered the district to supplement the record. The Court additionally required the district provide written transcripts of the video of

the school board meeting citing RCW 28A.645.020 “the school board *shall file the complete transcript and papers relating to the decision.*” BISD never filed a complete transcript of M.G.’s October 13, 2021 Zoom sexual harassment appeal hearing.

M.G.’s Reply in Support of the Motion to Compel cited *Hattrick v North Kitsap Schl Dist* 81 Wash.2d 668, 504 P.2d 302 (1972), which held a transcript of the evidence must be included in the record for judicial review. M.G. requested BISD provide a transcript of M.G.’s October 13, 2021 Zoom sexual harassment appeal hearing. (CP 201) BISD claimed the Zoom hearing was not recorded, or was not required to be recorded. (CP 203) Without a transcript of the Zoom hearing, a judicial review of the record was impossible. None of the testimony from Ganson or Murphy, from the Zoom hearing, was offered to Adams. None of the statements from M.G.’s counsel were transcribed, or included in the transcript. Adams could not review the Zoom hearing transcript as part of the de novo review. Adams failed to demand BISD provide the testimony from the Zoom hearing (required complete transcript) in order to make an independent determination regarding SBM’s October 20, 2021 decision.



Adams failed to require BISD provide the Zoom hearing transcript as required by *Hattrick*. Adams' FOF & COL was not based upon the necessary and required Zoom transcript.

On April 15, 2022, Adams denied M.G.'s Motion to Compel a complete record with Zoom transcripts. Adams also stated, "[T]here was no spoliation by the respondent school district," disregarding controlling case law. Adams failed to cite any legal authority for Adams' April 15, 2022 Order.

On April 8, 2022, M.G. filed a Motion for Reconsideration that addressed O'Donnell's claim that Ganson's testimony during the Zoom hearing was not really testimony because "no one was sworn in." (CP 324) Adams failed to ask O'Donnell why Ganson provided testimony at the Zoom hearing without being sworn in, particularly in light of Ganson's involvement with *Mercer Island Schl Dist v OPSI* 186 Wash.App. 939, 347 P.3d 924 (2015). The Reconsideration included the declaration of Robin Wilt, a party to *Mercer Island v OSPI*, to assist Adams. Robin Wilt stated, "Immediately after filing my complaint, MISD [Mercer Island School District] conducted a defective investigation using biased, partial and prejudicial

MISD administrators.” (CP 360-362) Robin Wilt said, MISD told her that the “outside investigator was unbiased.” BISD told also M.G. that the “outside investigator was unbiased.”

Robin Wilt stated, “MISD sent me the wrong HIB complaint form.” BISD claimed M.G. used the wrong HIB complaint form. Robin Wilt stated, “The trial judge in *Mercer* seemed to favor, or was partial to MISD even after describing MISD’s violations as ranging ‘from reasonable to incompetent to comically incompetent.” Adams favored BISD or was partial to BISD, like MISD’s trial judge who described MISD’s violations as ranging from “reasonable to incompetent to comically incompetent.” Robin Wilt stated, “The [trial] judge protected MISD from liability by stating the ‘undisputed facts do not meet the deliberate indifference standard.” (CP 360) Adams’ COL #17 stated, “The record does not indicate the actions taken by students, or the effect on M.G., rose to the level required for the district to find a violation occurred.” Even though the effect on M.G. was never explored. Robin Wilt said, “After the trial court ruled in favor of MISD, the case was appealed to Division One of the Court of Appeals. I felt like the Appeal Court took their job seriously and actually reviewed

the pleadings and examined the evidence.” (CP 360) “The Appeal Court determined that MISD failed to provide: a fair review of my HIB complaint, unbiased investigation and accurate decision regarding deliberate indifference by MISD.”

Regarding M.G.’s refusal to be interviewed by Murphy and Ganson, Robin Wilt stated, “If the District had truthfully informed me of its relationship with the investigators... I may have declined to allow my son to be interviewed” by MISD’s investigator. “In retrospect, I wish that I had hired my own investigator to conduct a fair, impartial and unbiased investigation.” (CP 360-361) M.G. hired a fair, neutral and unbiased investigator [MNSI] to conduct the investigation.(CP 521- 531) Finally, Robin Wilt stated, “The attorney for MISD [Ganson] did not appear to recognize that school districts have an enhanced and solemn duty of reasonable care and to protect their students.” (CP 361) M.G. told BISD that schools owe “an enhanced and solemn duty of reasonable care to protect their students.” *Harris v Federal Way Pub Schl* 21 Wash.App.2d 144, 505 P.3d 140 (2022), *citing Christensen v Royal Schl Dist* 156 Wn.2d 62, 67, 124 P.3d 283 (2005). (CP 442)

The Reconsideration Motion quoted Adams' question, "How is whether or not this was a 'HIB' or a 'sexual harassment claim' make any difference for our review purposes? (CP 330) Adams ignored the evidence presented by M.G. to Adams.

On April 15, 2022, Adams required M.G. to provide the Court with a transcript of the April 1, 2022 hearing to consider in reviewing the Motion for Reconsideration. On May 5, 2022, M.G. obtained an audio recorded transcript of the April 1, 2022 court hearing and provided the same to the Court for review.

On May 10, 2022, Adams denied the Motion for Reconsideration without even reviewing the audio transcript M.G. provided to the Court as requested. Adams stated, "The Petitioner did not provide a [written] transcript, instead providing only a CD [audio] recording of the hearing, which was not considered by the Court."

It was clear to M.G. that Adams was biased for BISD/ WSRMP and prejudiced against M.G. because Adams was married to a WSPSD employee (receiving community property income from WSPSD) that was insured by WSRMP. (CP 393)

Adams ignored controlling cases and denied the Motion to Compel. Adams should have disqualified herself following the Motion to Compel and Motion for Reconsideration particularly after Adams demanded M.G. provide the Court with an audio transcript and then disregarded the recording. (CP 377)

D. Adams Denied A Motion To Disqualify Herself In The Case

In May 2022, M.G. hired an investigator to determine why Adams ignored the law, similar to *Tatham v Rogers* 170 Wn.App. 76, 283 P.3d 583 (2012). M.G. discovered that Adams was married to a WSPSD employee and received community property income from a WSPSD (Fife Schl Dist). Both Fife and BISD were insured by WSRMP. WSRMP is an insurance pool. If a claim is paid for one member, all members must contribute. During a May 20, 2022 hearing, M.G.'s attorney confirmed that Adams concealed Adams' marriage to a WSPSD employee. Following the hearing, M.G. filed a Motion to Disqualify Adams. (CP 393-397) Adams knew or should have known that on January 6, 2022 that M.G.'s case involved a WSPSD insured by WSRMP. Adams concealed her marriage and community property income from a WSPSD

insured by WSRMP. If M.G. knew of Adams' concealment, M.G. would have requested a new and impartial judge. Case law requires a judge disqualify herself where there is personal bias or prejudice concerning a party (WSPSD) in a case before the judge. Due process requires not only an absence of actual bias, but also the absence of an appearance of bias. (CP 396)

Adams' Orders ignored: 1) A conflict of interest between WSRMP's Executive Board Member, Erin Murphy, who was simultaneously BISD's Title IX Coordinator; 2) A conflict of interest between BISD's investigator Jeff Ganson, who worked for school districts/agencies and failed to comply with BISD's P&P during BISD's investigation; 3) A conflict of interest by BISD's superintendent PBK, who was friends with the alleged cyber-harasser; 4) A conflict of interest when SBM employed BISD's old law partner; 5) A conflict of interest by a SBM [Sanjay Pal] who failed to recuse himself from the "unanimous decision" while Sanjay Pals' wife was employed by BISD and Sanjay Pal received community property income from BISD; 6) The clear and obvious failure by BISD to record M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing; 7) SBM deliberate refusal to allow M.G. to question testifying

witnesses at the hearing; 8) BISD's failure to convene M.G.'s Section 504 team meeting after multiple and repeated sexual harassment incidents. Adams ignored the carousel of conflicts and always ruled in favor of BISD. (CP 403) On June 17, 2022, Adams denied the Disqualification Motion. On July 1, 2022 Adams denied M.G.'s Motion for Reconsideration.

E. Adams' Refusal To Include Ganson's Notes In The Record

During the May 8, 2023 Presentation Hearing, Adams questioned, "Why should the Notes be included?" (CP 478) The obvious answer was that the Ganson's Notes should have been included in BISD's December 7, 2021 complete record. BISD's complete record deliberately excluded Ganson's biased, prejudicial, partial and embarrassing Notes. BISD filed an Incomplete Record (CP 2). On May 12, 2023 M.G. filed a Motion to Compel Adams to Supplement the Incomplete Record with Ganson's Notes.

On **September 17, 2021** M.G. requested a copy of Ganson's Notes from BISD. On **December 21, 2023** BISD finally provided Ganson's Notes to M.G.. BISD delayed more than 450 days in the production of necessary records. Ganson's records claimed, "Galaxy Brain Bullshit" "Just

tons of BS” “totally speculative, no evidence” and “circular nonsense.” (CP 437-440) Ganson’s Notes/report was the basis of Murphy’s September 10, 2021 determination (CP 189) “our decision” that BISD did not violate P&P. (CP 383)Ganson’s Notes/report was a basis of PBK’s September 23, 2021 determination of no P&P violations. (CP 192)

SBMs made a unanimous October 20, 2021 decision that BISD did not violate P&P based upon Ganson’s report that omitted relevant facts and reached unjustified conclusions. On May 24, 2023, M.G. filed a Reply brief wherein M.G. explained why the Notes must be included in the complete record. M.G. relied upon the holding in *Mercer Island Schl Dist v OSPI* 186 Wash.App. 939, 959, 347 P.3d 924 (2015) which stated, “[the school] adopted Ms. Miller’s [Ganson’s] report, which omitted relevant facts and reached unjustified conclusions.” Ganson’s Notes supplemented Ganson’s October 13, 2021 testimony before the SBM. On May 26, 2023, Adams improperly excluded Ganson’s embarrassing Notes because Adams was biased for BISD/ WSRMP and prejudiced against M.G.. Adams was beholden to WSPSD for community property income.



On June 2, 2023, M.G. filed a Motion for Reconsideration of Adams' erroneous Order preventing a complete record. M.G. detailed Adams' impartiality under the CJC. In the Motion, M.G. explained BISD's habitual misrepresentation of facts. (CP 412-416)

On June 8, 2023, Adams again denied M.G.'s Motion for Reconsideration, violating controlling case law. At all times in this litigation, Adams' ignored the holding in *Mercer*. Adams refused to accept that M.G.'s Petition for Review of Administrative Decision (RCW 28A.645 and 34.05) was nearly identical to *Mercer*. The case before this Court is not distinguishable from *Mercer*. The parties are similar (Ganson and WSRMP). The issues are similar (compromised investigations). The legal standards are similar (deliberate indifference). The outcome must be similar. (District violated the P&P). (CP 498-507)

On June 7, 2023, Adams issued FOF & COL that failed to cite to a single fact in the record and failed to reference a controlling case. Adams' FOF & COL was defective on its face. Adams improperly dismissed SBM under RCW 28A.645.010. Adams refused to compel transcripts, or a

complete record under RCW 28A.645.020. Adams' decision ignored the many conflicts of interest and defects committed by BISD. Adams issued a defective FOF & COL under RCW 28A.645.030, without analysis. This Court must vacate Adams' FOF & COL and reverse the SBM's "unanimous decision." Based on the evidence and record, this Court must find deliberate indifference by BISD.

## **VI. BURDEN OF PROOF**

This Petition of Review of Administrative Decision was filed under RCW 28A.645 and RCW 34.05. On June 17, 2023, the case was Certified for Direct Review pursuant to RCW 34.05.518. The COA rejected the transfer and Adams issued more Orders. Adams' Orders are now appealed to the COA.

RCW 34.05 (Washington's Administrative Procedure Act) governs review of administrative decisions. *Beatty v Fish and Wildlife Comm* 185 Wn.App. 426, 442, 341 P.3d 291 (2015). When reviewing an administrative decision, the Court of Appeals sits in the same position as the superior court. *Beatty* at 443. M.G. bears the burden of demonstrating the invalidity of the SBM decision/ Adams' Orders/FOF & COL. (CP 378)

M.G. requests relief from Adams' Orders and the June 7, 2023, FOF & COL (CP 589-596) on the grounds that: 1) the Court erroneously interpreted the RCWs; 2) the FOF & COL were never supported by evidence; 3) and the Orders and FOF & COL were arbitrary and capricious (RCW 34.05.570). There were substantial flaws regarding an absence of a complete record before the court that must be addressed by the COA.

The Court of Appeals reviews the SBM's decision pursuant to the standards set forth in RCW 34.05. *Mercer Island Schl Dist v OSPI* at 960. Under the error of laws standard, a court may substitute its opinion for the Court and overturn the Orders and FOF & COL. *Mercer Is. v OSPI* is the controlling case law.

## **VII. ERRORS ASSIGED TO FINDINGS OF FACT ("FOF").**

Substantial evidence failed to support the following FOFs:

**"FOF #2:** Moore was made aware of social media postings *purported to have been made by M.G.* toward a female student." Adams failed to cite any supporting evidence.

The facts as indicated in the record confirmed that M.G. never made any social media postings about any girls. The girls admitted to BISD that they "made up the posts." (CP 71)

BISD's administrative notes confirmed the female students "Fabricated story re: M.G." (CP 71). "C [Moore] said that's harassment." (CP 71) There was no evidence offered to Adams, because none existed, that M.G. ever purported to create social media postings toward a female student.

Adams' erroneous FOF #2 was false.

**"FOF # 3:** Moore understood that the situation was resolved." Adams created FOF#3 from non-existent facts/declarations. Moore never testified during M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing. Moore never made a declaration under penalty of perjury in the case. Adams relied upon Ganson's bias, partial and prejudicial Notes to issue FOF #3. Ganson's report stated, "things were fine." [FOF (CP 590)] Ganson's Notes, however, stated, "Seemed resolved." (CP 452) Adams' reliance upon the term "resolved" was from Ganson's Notes, which Adams excluded, from Ganson's report.

Adams refused to admit Ganson's Notes into the record, but still relied on Ganson's Notes in FOF #3. No substantial evidence existed to confirm Moore "understood that the situation was resolved." Moore failed to offer any admissible evidence, or ever declared that the "situation was resolved."

**“FOF #19:** The amended complaint referred to BISD Board Policy and Procedure 3706.” M.G.’s HIB/AHIB IRFs referenced sexual harassment numerous times.

Emily Neer’s declaration (CP 281) confirmed one BISD form. M.G. used BISD’s only form to report sexual harassment.

**“FOF #21:** Murphy had a conflict of interest due to the fact that she was an Executive Board member of WSRMP.”

Murphy was BISD’s assistant superintendent and Title IX Coordinator/Officer while an Executive Board member of WSRMP. (CP 30) Murphy was an agent of BISD and WSRMP.

Ganson’s Notes claimed Murphy’s conflict of interest was “Galaxy Brain bullshit.” (CP 561) Adams relied upon Ganson’s notes, which stated, “Murphy is on the Executive Board, but that doesn’t establish any kind of conflict whatsoever.” (CP 561) Adams’ Order omitted Ganson’s Notes.

Murphy had a conflict of interest investigating BISD Title IX claims and simultaneously serving on WSRMP’s Executive Board (CP 30) because WSRMP insured BISD’s Title IX claims. Murphy sought to eliminate valid insurance claims. Murphy filed a 2019 WSRMP claim (19-INV08132) for M.G., but failed to investigate M.G.’s claim until 2021.

**“FOF #24:** Ganson had a conflict of interest because he previously served as WSRMP’s defense attorney [*Mercer Is. Schl Dist. v OSP/*] and Ganson’s own Notes demonstrated bias.” Ganson was not a fair, neutral or impartial investigator.

BISD was required to use a fair, neutral, impartial and unbiased investigator to investigate M.G.’s HIB/AHIB IRFs under P&P 3700, P3706, P3700, Model Proc 3207P. Ganson was a WSRMP/attorney, not a fair, neutral impartial and unbiased investigator. M.G. did not agree to another defense attorney acting as an investigator. (CP 379) M.G. hired MNSI to conduct a fair, neutral, impartial and unbiased investigation. MNSI found P&P violations. (CP 531)

**“FOF # 25:** Ganson issued a report finding that no HIB had occurred and there was no violation of BISD’s P&P.” Ganson did not find violations regarding harassment or violations by BISD to avoid M.G.’s required Section 504 team meeting.

BISD/WSRMP’s Ganson protected BISD/WSRMP by ignoring HIB violations. BISD already paid \$300,000.00 in *Webster*, \$200,000.00 in *H.W.* and \$1,325,000.00 to *A.H.* Ganson protected BISD/WSRMP from more insurance claims. Adams ignored MNSI’s report that found violations of P&P.

Adams did not even accept BISD's own notes that stated, "C[Moore] said that's harassment." (CP 71) BISD's failure to use a fair, neutral, impartial and unbiased investigator constituted deliberate indifference. (*See Mercer Is v OSPI*)

**"FOF #26:** Murphy issued a decision based on Ganson's report concluding that the allegations in the HIB was not supported."

Murphy's decision did not reference Ganson's biased, prejudicial and partial Notes because Ganson's Notes did not provide substantial evidence to ignore P&P violations. Murphy omitted relevant facts and reached unjustified conclusions.

**"FOF # 28:** PBK issued a decision upholding Murphy's decision, based on Ganson's report that there was no violation of BISD's P&P." PBK relied upon Murphy's decision.

PBK disregarded Ganson's Notes, which established a bias for BISD and prejudice against M.G., in the decision. PBK's decision omitted relevant facts and reached unjustified conclusions. PBK was friends with the cyber-harasser and PBK protected the alleged cyber-harasser's family.

**"FOF # 32:** SBM issued a decision upholding Murphy's, PBK's and Ganson's decision that there were no P&P violations." SBM relied upon PBK/Murphy's flawed decisions.

SBM's decision relied upon Ganson's testimony and Notes. Ganson was biased for WSRMP/BISD and prejudiced against M.G., as indicated in the Notes. SBM's decision was drafted by BISD's old law partner to protect BISD/WSRMP.

#### **VIII ERRORS ASSIGNED TO CONCLUSIONS OF LAW ("COL").**

The COL failed to rely on case law, or legal rules to support the COL. Adams's COL reached unjustified legal conclusions:

**"COL #3:** A reasonable and objective person reviewing M.G.'s HIB would conclude that the complaint was for cyber-bullying" not sexual harassment. M.G.'s HIB/AHIB referenced sexual harassment at least 12 times in the attachment.

The SBM ignored the references to "sexual harassment" in M.G.'s IRF. Adams' refused to read "sexual harassment" in the IRF. SBM/Adams acted with deliberate indifference in reading the plain language of M.G.'s HIB/AHIB IRF.

The reasonable standard test for deliberate indifference was set forth in *Mercer Is. Schl. Dist v OSPI* at 958.

"Deliberate indifference" is established when "the District's actions were clearly unreasonable in light of known circumstances." M.G.'s HIB/AHIB make multiple references to



sexual harassment of M.G. by female BISD students. The Declaration of Emily Neer confirm that BISD only had one IRF for all cyber-bullying, sexual harassment and harassment. BISD, like Mercer, claimed the wrong form was used. (CP 235) “COL #4: M.G. was estopped and precluded from arguing that M.G.’s HIB IRF was a sexual harassment complaint.” Adams ignored each reference in the record where M.G. claimed “sexual harassment” in M.G.’s HIB/AHIB IRF.

BISD, SBM and Adams relied upon false claims that BISD had a harassment form and a sexual harassment form. BISD only had one form for harassment and sexual harassment. The declaration by Emily Neer confirmed that BISD had only ONE IRF document in 2021, which was used to address all complaints against BISD for sexual harassment, harassment, cyber-harassment, stalking, defamation, bullying and intimidation. (CP 282) Adams’ failed to cite any case law for the grossly inaccurate Conclusion: the “M.G. was estopped and precluded from arguing that M.G.’s IRF was a sexual harassment complaint- on BISD’s only complaint form. A year later, in 2022, BISD created a separate Sexual harassment HIB IRF. (CP 141-145)

Adams failed to cite authority supporting her illusory conclusion “that all the elements of estoppel have been met to preclude arguments that M.G.’s HIB/AHIB Complaints were meant to be complaints of sexual harassment.” M.G.’s HIB/AHIB IRF’s actually claimed “sexual harassment.”

“COL #6: BISD filed and certified an allegedly complete record pursuant to RCW 28A.645.020.” SMB’s quasi-judicial decision was not available for judicial review. BISD excluded any evidence that was collected from the 2019 sexual harassment of M.G., as well as a complete copy of Ganson’s 2021 Notes, which established bias, prejudice and partiality against M.G and in favor of BISD/WSRMP.

In *Barrie v. Kitsap Cy.*, 84 Wash.2d 579, 527 P.2d 1377 (1974), the Court held that any quasi-judicial decision for which a verbatim record of proceedings was not available must be reversed and remanded for new proceedings. BISD admitted to not creating a transcript from M.G.’s October 13, 2021 Zoom sexual harassment appeal hearing. The sole reason for requiring a record is to provide the appellate court with a factual record within which to set its decision. See *Barrie*, at 587, 527 P.2d 1377 (“[t]he very purpose for requiring a record

is to provide an adequate factual accounting which will enable a reviewing court to resolve the issues before it in a given case" (italics ours)); *Loveless v. Yantis*, 82 Wash.2d 754, 763, 513 P.2d 1023 (1973) (judicial review not possible " 'unless all the essential evidentiary material ... is in the record' ").

**“COL #8:** The Court concluded that M.G.’s allegations concerning the 2019 incident was not supported by evidence, after Murphy filed a WSRMP claim but failed to collect evidence that supported the 2019 sexual harassment HIB.”

As BISD’s Title IX Officer, Murphy was obligated to collect evidence to establish M.G.’s claims. Murphy failed to collect evidence to establish M.G.’s claims after filing a WSRMP insurance claim because of Murphy’s conflict.

M.G. filed a Motion for Sanctions because BISD spoliated evidence. Adams’ denied the Motion for Sanctions. M.G. filed a Motion to Compel because BISD failed to preserve evidence, even after a valid litigation hold. Adams denied the Motion to Compel. Adams’ prevented M.G. from obtaining evidence that was in the care, custody and control of BISD. Adams ignored the holding in *J.K. v Bellevue* \_\_ Wash.App. \_\_,

500 P.3d 138 (2021) regarding spoliation. Adams disregarded the holding in *Hattrick v No Kitsap* 81 Wn.2d 668, 504 P.2d 302 (1972) in order to prevent M.G. from a complete transcript and to conclude, “M.G.’s allegations concerning the 2019 incident was not supported by evidence.” Adams prevented the evidence.

“COL #9: There was no violation of BISD’s P&P per the SBM.” Adams’ conclusion was not supported by the evidence. COL #9 was arbitrary and capricious.

Courts have inherent constitutional power to review illegal or manifestly arbitrary and capricious actions violative of fundamental rights. The right to be free from such action is itself a fundamental right and hence any arbitrary and capricious action is subject to review. *Pierce Cty Sheriff v Civil Ser Comm* 98 Wn.2d 690, 658 P.2d 648 (1983) citing *Williams v. Seattle Sch. Dist. 1*, 97 Wash.2d 215, 221-22, 643 P.2d 426 (1982).

BISD’s old law partner advised the SBM to make an arbitrary and capricious decision that would not adversely affect BISD/WSRMP. SBM engages in an impermissible conflict of interest by employing BISD’s old law partner (CP 323). SBM improperly relied upon Ganson- without including Ganson’s biased Notes with Ganson’s report.

Ganson's allegiance to WSRMP along with Murphy's conflicting employment with WSRMP and PBK's bias in favor of a family friend [the alleged cyber-stalker] resulted in an arbitrary and capricious decision that requires reversal.

**"COL #10:** M.G. refused to be interviewed by WSRMP's Murphy and Ganson during BISD's/WSRMP's investigation."

Adams incorrectly concluded that M.G. was required to consent to an interview by Ganson. Adams failed to read controlling case law. The Court in *Mercer Is. v OSPI* stated, "If the District had truthfully informed them [parent] of its relationship [with investigators]... the parents may have declined to allow their son to be interviewed by the coordinator or attorney investigator" *Mercer* at 957.

**"COL # 11:** Adams claimed Murphy did not have a conflict of interest while she was both a WSRMP Executive Board member and BISD's Title IX Officer." Adams failed to comprehend conflicts of interest. Adams failed to comprehend her own conflict of interest- when she was married to a WSPSID employee insured by WSRMP- via pool insurance. It was obvious to everyone, except Ganson and Adams, that Murphy had a conflict of interest when Murphy filed a 2019 WSRMP

claim, but did not investigate M.G.'s claim until 2021. Murphy demonstrated a conflict of interest when she failed to collect evidence in 2019 of the sexual harassment of M.G.. Murphy failed in her duties as BISD's Title IX officer and failed to protect students. Murphy adopted Ganson's biased report that omitted relevant facts and reached unjustified conclusions.

**COL # 12:** Adams claimed "PBK was not biased or had a conflict of interest when PBK's son was the alleged cyber-harasser's [prom] date."

PBK was family friends with the alleged 2021 cyber-stalker/harasser and PBK should have recused himself from the decision-making process to avoid the appearance of impropriety. Murphy, Ganson, PBK and Adams were neither neutral, fair nor impartial, when they had clearly competing interests. Each received money from a party that had a direct interest with their job as an unbiased decision-maker. M.G. never consented to the conflicts of interest. A rigged outcome does not ensure confidence in the justice system.

“COL # 13: SBM Sanjay Pal’s wife, Krista Pal, was a BISD counselor, who interviewed the alleged cyber-stalker’s father.”

The appearance of fairness required SBM Sanjay Pal to recuse himself from the decision-making process when Sanjay Pal’s wife earned community income as an employee of BISD’ and was integral in BISD’s harassment investigation (CP 493)

**COL #14:** Adams claimed “Ganson’s investigation was completed in accordance with BISD P&P and was not biased.”

Adams was factually inaccurate. Ganson’s investigation failed to obtain required interviews of the alleged aggressors and complainant. BISD’s P&P required a neutral and unbiased investigation. Ganson’s Notes proved Ganson was biased.

Adams was legally inaccurate. The trial court in M.G.’s case and in *Mercer* both failed to require a neutral, unbiased and impartial investigator. In *Mercer*, the Appeal Court held that Ganson’s biased law partner/ investigator omitted relevant facts and reach unjustified conclusions because Ms. Miller “failed to observe the District’s P&P.” The trial court in M.G.’s case ignored the requirement of the P&P and falsely claimed Ganson “completed the investigation in accordance with BISD’s P&P.” Ganson’s own Notes revealed biased comments like: “Galaxy

“Galaxy Brain Bullshit” “Just tons of BS” “outlandish speculation” “total speculation” “not harassing in any way” “not stalking at all” “no demonstrable harm” “no evidence of falsity” and “circular nonsense” while omitting relevant facts. Ganson reached unjustified conclusions (CP 434-439) Ganson’s own Notes demonstrated bias and partiality towards BISD/WSRMP and prejudice against M.G.. Ganson purposefully continued advocating for WSRMP’s client [BISD] when Ganson omitted relevant facts and reach unjustified conclusions. [Mercer at 959] The omissions and ignorance in M.G.’s case constituted deliberate indifference. [Mercer at 959.]

Adams’ COL failed to reference the controlling case law on deliberate indifference in Washington State -*Mercer Island v OSPI*. Adams’ FOF & COL also failed to cite other cases. Adams’ FOF & COL failed to reference any citation to any alleged “facts” and was completely devoid of conclusion based upon case law. M.G.’s Appellate Brief cited each fact and each supporting case law to require a reversal of Adams’ defective FOF & COL. Adams’ failure to properly cite a single “fact” to the existing record and any supporting case law to justify the FOF & COL makes the FOF & COL defective on its face.



Adams' FOF & COL was an extension of Ganson's biased Notes, Murphy's defective decision, PBK's flawed decision and SBM's unrecorded and defective October 13, 2021 Zoom sexual harassment appeal hearing decision.

**"COL # 15:** BISD's SBM conducted the October 13, 2021 hearing in compliance with P&P and Washington law."

SBM engaged in multiple conflicts of interest, concealment of documents and records, falsification of evidence that prejudiced and showed bias against a male, Section 504 student under Title IX. SBM confused harassment with sexual harassment. Sexual harassment is the unwelcomed conduct on the basis of sex that a reasonable person would find severe, pervasive and objectively offensive, such that it denied equal access to an educational program." *David v Monroe C'ty Ed* 526 U.S. 629 (1999). BISD's female students referred to M.G. as "F\*ck-boy" and "Sl\*t-boy" before falsely accusing M.G. of rape from 2019 to 2021. BISD's female students engaged in unwelcome conduct on the basis of sex, which was severe, pervasive and objectively offensive. BISD's female students "disrupted [M.G.'s] learning environment." (CP 69)

BISD allowed female students to sexually harass M.G. at school. BISD failed to discipline the female students. BISD overlooked their “enhanced and solemn duty of reasonable care to protect students [male, Section 504 students/M.G.]. *Harris v Federal Way Pub Schl* 21 Wn.App. 144, 505 P.3d 140 (2022).

“COL # 16: M.G. had an opportunity to argue that the investigation was not properly conducted and that the investigators had a conflict of interest, or were biased.”

Adams denied two Motions to Compel a Complete Record, plus she deliberately excluded Ganson’s Notes, but still used them in Adams’ decision. The evidence established that during the May 8, 2023 presentation, M.G. was unable to argue that the investigations were not properly conducted, or that the investigators had conflicts of interest and were biased and prejudiced against M.G. because Adams rejected each effort to create a complete record or implement a fair, unbiased and neutral investigation. Adams excluded MNSI’s impartial investigation in favor of Ganson, Murphy and PBK.

“COL # 17: The Court concluded that a review of the incomplete record supported SBM’s decision that no HIB occurred.”

Adams improperly concluded that: 1) all the evidence was not necessary to make a complete record; 2) M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing did not need to be recorded despite 34 CFR §106; 3) RCW 28A.645.020, did not require a transcript, or complete record even as the RCW stated, "shall file a complete transcript..."; 4) Murphy, PBK and Ganson did not have conflicts of interest, despite competing jobs, duties and family friends; and 5) Ganson's biased, prejudicial and partial Notes should be excluded because they were embarrassing to BISD/ WSRMP - resulting in SBM's decision.

BISD's Moore, Murphy and PBK failed to properly discipline the female students for using sexually harassing and derogatory terms about M.G.. BISD's Moore, Murphy and PBK acted with deliberate indifference when BISD's female students disrupted M.G.'s right to a free appropriate and public education. *Bethel Schl Dist v Fraiser* 478 U.S. 675 (1986).

The discriminatory harassment occurred because BISD failed to take "prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects and prevent the harassment from recurring." *Mercer*

at 964 The sexual harassment of M.G. from 2019 to 2021 was “sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services activities or opportunities offered by a school district.” *Mercer* at 964.

“COL # 18: The board did not conduct a secret after-hearing after the board announced that the hearing was concluded.”

BISD’s responsive documents to the public records requests confirmed that the SBM, attorney [old law partner of BISD’s attorney] conducted an after-meeting hearing with BISD witnesses, BISD’s attorneys and SBM after terminating the October 13, 2021 Zoom sexual harassment appeal hearing when the Petitioner/Appellant appeared by Zoom. (CP 199)

COL # 19: Adams erroneously claimed M.G.’s October 13, 2021 sexual harassment appeal hearing did not need to be recorded or transcribed under RCW 28A.645.020, or CFR. Adams’ COL stated, “Neither Board Policy nor the statute as issue required that a school board record such a hearing.”

State law and federal law required a recorded sexual harassment appeal hearing. Adams failed to require a transcript. Adams relied upon an incomplete and factually inaccurate

recollection of facts and evidence presented during motions and during the May 8, 2023 presentation. Adams' COL was completely devoid of supporting or controlling case law. **"COL # 20:** SBM [failed to] properly address M.G.'s pre-hearing motions. Adams' COL was unsupported by evidence.

SBM's attorney [old law partner of BISD's attorney] failed to issue a pre-hearing Order on pending Motions to disqualify a decision-maker who has a conflict of interest.

SBM's decision-making process, including [BISD's ex-law partner] attorney, (PC 323) did not appear to be fair, impartial and unbiased or advise Sanjay Pal ("PAL") regarding conflicts of interest. (CP 493) Adams issued the COL without a reference to case law or applicable codes. Adams' COL was devoid of any foundation or analysis to support this assertion.

Case law mandated SBM be fair, impartial and unbiased in M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing proceedings. SBM was not fair, impartial or unbiased during M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing. Pal's spouse earned community property income from the same entity that Pal was supposed to examine.

## **IX. CONCLUSION**

Based upon irrefutable evidence, M.G. has conclusively established deliberate indifference by BISD/SBM including, but not limited to the following:

1) BISD's teacher Moore knew of repeated, severe, pervasive and persistent harassment (both threats of physical violence and sexually demeaning terms) beginning in March 2019 and continuing through December 2019.

2) BISD's Murphy knew of the severe, pervasive and persistent sexual harassment of M.G. and filed a claim with Murphy's WSRMP (19-INV08132) but failed to collect evidence or investigate the claim in 2019 or 2020. Murphy had a conflict of interest because she was an Executive Board member of WSRMP.

3) Moore threatened one of the female students with removal from BISD's after-school club because of the sexual harassment.

4) Moore saw the electronic information (harassing terms and photo) on the female students' electronic devices, but failed to collect evidence or alert M.G.'s Section 504 team to meet as required by BISD's own P&P (Policy 3706).

5) BISD administrators knew that the “stories re: M.G. was fabricated.” “C [Moore] said that’s harassment.” “The girls made up the posts.” BISD failed to take appropriate steps to safeguard a male Section 504 student after actual notice of sexual harassment.

6) Female students sent Moore additional false, malicious and defamatory statements about M.G. and Moore failed to prevent further sexual harassment of M.G..

7) BISD negligently allowed a female student to create, edit and save a dossier on BISD’s technology platforms and publish the false, malicious and defamatory dossier in violation of BISD’s own Procedure 2022.

8) Murphy tried to investigate a 2019 WSRMP claim in 2021 after BISD’s technology platforms were used to create, edit and save a false, malicious and defamatory dossier.

9) After Ganson unintentionally established deliberate indifference in *Mercer Island v OSPI*, BISD hired Ganson to investigate M.G.’s HIB/AIIB IFRs. M.G. did not consent to Ganson and instead hired MNSI to investigate the HIB/AIB IFRs.

10) BISD Proc P3706 required interviews of the complainant and the alleged aggressors.

11) MNSI interviewed M.G. and found multiple violations of BISD' P&P.

12) Ganson did not interview the complainant or alleged aggressors and could not find any P&P violations. Ganson's Notes confirmed that Ganson was biased towards BISD and prejudiced against M.G..

13) Murphy relied upon Ganson's biased report and did not find any BISD P&P violations. MNSI found multiple violations.

14) PBK relied upon Murphy's decision and Ganson's biased report and could not find any BISD P&P violation.

15) SMB hired BISD's old law partner to take evidence during M.G.'s October 13, 2021 Zoom sexual harassment appeal hearing. SBM failed to record the Zoom hearing or make any notes.

16) SBM Pal failed to disclose his obvious conflict and recuse himself when his spouse interviewed the alleged cyber-stalker/ harasser while receiving community property income from BISD.

17) SBM took testimony from Murphy and Ganson in the Zoom based upon Ganson's biased Notes and Murphy's conflicts.

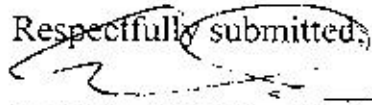
18) SBM upheld Ganson's, Murphy's, PBK's flawed decisions.



- 19) M.G. was not allowed to ask questions of BISD's witnesses.
  - 20) Adams dismissed the individual SBM in spite of RCW.
  - 21) BISD falsely told Adams there were two harassment forms.
  - 22) Adams failed to require a complete record/transcript.
  - 23) Adams overlooked BISD's spoliation of evidence.
  - 24) Adams refused to include Ganson's biased Notes but used Ganson's biased Notes in Adams' FOF & COL.
  - 25) Adams' concealed her marriage to a Washington State Public School district employee, insured by WSRMP.
  - 26) Adams' issued FOF & COL without relying a single controlling case or citing a single reference to an alleged fact.
- SBM's decision to uphold Murphy's decision and PBK's decision was hopelessly flawed and must be reversed. BISD acted with deliberate indifference at multiple levels in this case. The trial court's orders were obvious error and Adams' FOF & COL were not based upon substantial evidence, analysis or any case law.

Dated : August 31, 2023

Respectfully submitted,

  
\_\_\_\_\_  
Marcus Gerlach WSBA # 33963  
Attorney for M.G./ Petitioner

CERTIFICATE OF COMPLIANCE

This document contains 11,955 words, excluding the parts of the document exempted by RAP 18.17.



Marcus Gerlach WSB # 33963  
Attorney for Petitioner/Appellant M.G.  
579 Stetson Place  
Bainbridge Island, WA 98110  
Tel: 206. 471. 8382  
msg2x4@yahoo.com

## APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY

SUZANNE GERLACH,

Plaintiff,

vs.

No. 23-2-01398-18

BAINBRIDGE ISLAND SCHOOL  
DISTRICT #303, a municipal  
corporation,

Defendant.

DEPOSITION UPON ORAL EXAMINATION  
VIA ZOOM VIDEOCONFERENCE OF  
PETER BANG-KNUDSEN

9:00 a.m.  
Wednesday, July 3, 2024  
Via Zoom Videoconference

BRANDICE L. PIVAR, RPR, CCR  
NORTHWEST COURT REPORTERS  
20819 72nd Avenue South, Suite 625  
Kent, Washington 98032  
(206) 623-6126  
info@northwestcourtreporters.com

1 Q Did Bainbridge Island School District preserve all the  
2 audio records regarding the appeal?

3 A I don't believe there were audio records regarding that  
4 appeal.

5 Q Did Bainbridge Island ever preserve any video records  
6 or videoconferencing regarding that appeal?

7 A I don't believe there were any video recordings of that  
8 appeal.

9 Q Do you remember the October 13th appeal hearing?

10 A Yes.

11 Q Was that in person, or was that by Zoom?

12 A I -- I was there along with school board members in the  
13 school district board meeting room. As I recall, you were  
14 on Zoom.

15 Q So the hearing was conducted by Zoom; correct?

16 A Yes.

17 Q And does the school district have a copy of that  
18 October 13, 2021, Zoom hearing?

19 A It was not recorded.

20 Q Did anyone direct the Bainbridge Island staff to record  
21 that October 13, 2021, appeal hearing?

22 A No.

23 Q Did the litigation hold that you said you received and  
24 you said the school complied with, did that include the  
25 October 13, 2021, Zoom hearing?

1 A I don't believe so.

2 Q But you said you don't have a copy of the hearing?

3 A It was not recorded.

4 Q Okay. Well, how tough is it to record a Zoom hearing?

5 You just push a button; right?

6 A Yes.

7 Q Okay. Did you direct the Bainbridge Island School

8 District staff not to record that Zoom hearing?

9 A It was based on legal counsel advice.

10 Q Okay. So someone other than you determined that it was  
11 not going to be recorded; correct?

12 A Correct.

13 Q But you were the one that received the litigation hold,  
14 not legal counsel; correct?

15 A Correct.

16 Q Okay. And the school board members received notice of  
17 the litigation hold; correct?

18 A Correct.

19 Q And Lani Chaffee sent out notices to everybody that,  
20 "Hey, we got to -- litigation hold's in effect. We got to  
21 make sure we preserve everything"; correct?

22 A Correct.

23 Q But that October 13, 2021, Zoom hearing was not  
24 preserved; correct?

25 A It was not recorded.

1 Q Was it preserved some other way? Are there notes from  
2 it?

3 A Not that I'm aware of.

4 Q Okay. How long did that Zoom hearing take place?

5 A I don't remember the exact timeline.

6 Q Did you create any notes while you were at the Zoom  
7 hearing?

8 A No.

9 Q Did you see anyone else make any notes at the Zoom  
10 hearing?

11 A No.

12 Q Did you see any notes prior to the Zoom hearing that  
13 were created on your behalf or on behalf of the school  
14 board?

15 A No.

16 Q Did you make any notes about what you were going to  
17 talk about prior to the October 13, 2021, Zoom hearing?

18 A No.

19 Q Did you receive notice that you weren't supposed to  
20 record it in writing or just over the telephone or in  
21 person?

22 A I don't recall.

23 Q Do you know if there's an electronic record of that  
24 direction not to record the October 13, 2021, Zoom hearing?

25 A I do not.

## APPENDIX D



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**From:** Lani Chaffee <lchaffee@bisd303.org> <lchaffee@bisd303.org> on behalf of Lani Chaffee  
**Sent:** Wednesday, July 7, 2021 5:26 PM  
**To:** Sanjay Pal  
**Subject:** NOTICE TO PRESERVE ALL DOCUMENTATION RELATING TO POTENTIAL LAWSUIT

Sanjay,

This letter is to inform you that the District has received notice that M. G. along with this parents and guardians may be filing a lawsuit against the District. As a potentially involved party, it is the obligation of the District to preserve all records including but not limited to all documents, paper records, data, materials, videos, photographs, equipment, emails, notes, calendar entries documents, audio recordings, involving M. G. ——— and his interactions with District staff and other students. The district is unaware of the exact nature of the potential lawsuit, or the claims that will be made.

The District expects all of the abovementioned items to be requested in the course of any potential litigation. The District, therefore, requests you to preserve and maintain any and all electronically stored information (ESI), documents, records, and other tangible things described above relating to M. G. ——— until informed otherwise. You should also take steps to prevent the destruction, loss, or alteration of any such materials.

Please contact me directly if you have any questions or concerns.

Sincerely,

Lani Chaffee

Lani Chaffee  
Executive Assistant to the Superintendent  
Bainbridge Island School District  
206 780 1052



**BAINBRIDGE  
ISLAND**

SCHOOL DISTRICT NO. 303

STRONG MINDS, STRONG HEARTS, STRONG COMMUNITY

Bainbridge Island School District Office  
8489 Madison Ave NE, Bainbridge Island, WA 98110

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**From:** Lani Chaffee <lchaffee@bisd303.org> <lchaffee@bisd303.org> on behalf of Lani Chaffee  
**Sent:** Wednesday, July 7, 2021 5:22 PM  
**To:** Christina Huiet  
**Subject:** NOTICE TO PRESERVE ALL DOCUMENTATION RELATING TO POTENTIAL LAWSUIT

Christina,

This letter is to inform you that the District has received notice that M. **G.**, along with this parents and guardians may be filing a lawsuit against the District. As a potentially involved party, it is the obligation of the District to preserve all records including but not limited to all documents, paper records, data, materials, videos, photographs, equipment, emails, notes, calendar entries documents, audio recordings, involving M. **G.**, ——— and his interactions with District staff and other students. The district is unaware of the exact nature of the potential lawsuit, or the claims that will be made.

The District expects all of the abovementioned items to be requested in the course of any potential litigation. The District, therefore, requests you to preserve and maintain any and all electronically stored information (ESI), documents, records, and other tangible things described above relating to M. **G.**, ——— until informed otherwise. You should also take steps to prevent the destruction, loss, or alteration of any such materials.

Please contact me directly if you have any questions or concerns.

Sincerely,

Lani Chaffee

Lani Chaffee  
Executive Assistant to the Superintendent  
Bainbridge Island School District  
206-780-1052



**BAINBRIDGE  
ISLAND**

SCHOOL DISTRICT No. 303

STRONG MINDS, STRONG HEARTS, STRONG COMMUNITY

Bainbridge Island School District Office  
8439 Madison Ave NW, Bainbridge Island, WA 98110

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**From:** Lani Chaffee <lchaffee@bisd303.org> <lchaffee@bisd303.org> on behalf of Lani Chaffee  
**Sent:** Wednesday, July 7, 2025 5:27 PM  
**To:** "Robert Cronwell;"  
**Subject:** NOTICE TO PRESERVE ALL DOCUMENTATION RELATING TO POTENTIAL LAWSUIT

Robert,

This letter is to inform you that the District has received notice that M. G. along with his parents and guardians may be filing a lawsuit against the District. As a potentially involved party, it is the obligation of the District to preserve all records including but not limited to all documents, paper records, data, materials, videos, photographs, equipment, emails, notes, calendar entries documents, audio recordings, involving M. G. \_\_\_\_\_ and his interactions with District staff and other students. The district is unaware of the exact nature of the potential lawsuit, or the claims that will be made.

The District expects all of the abovementioned items to be requested in the course of any potential litigation. The District, therefore, requests you to preserve and maintain any and all electronically stored information (ESI), documents, records, and other tangible things described above relating to M. G. \_\_\_\_\_ until informed otherwise. You should also take steps to prevent the destruction, loss, or alteration of any such materials.

Please contact me directly if you have any questions or concerns.

Sincerely,

Lani Chaffee

Lani Chaffee  
Executive Assistant to the Superintendent  
Bainbridge Island School District  
206-730-1052



**BAINBRIDGE  
ISLAND**

SCHOOL DISTRICT NO. 305

STRONG MINDS. STRONG HEARTS. STRONG COMMUNITY.

Bainbridge Island School District Office  
8489 Madison Ave NE, Bainbridge Island, WA 98110

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**From:** Lani Chaffee <lchaffee@bisd303.org> <lchaffee@bisd303.org> on behalf of Lani Chaffee  
**Sent:** Wednesday, July 7, 2021 5:23 PM  
**To:** Mark Emerson  
**Subject:** NOTICE TO PRESERVE ALL DOCUMENTATION RELATING TO POTENTIAL LAWSUIT

Mark,

This letter is to inform you that the District has received notice that M. **G.**, along with this parents and guardians may be filing a lawsuit against the District. As a potentially involved party, it is the obligation of the District to preserve all records including but not limited to all documents, paper records, data, materials, videos, photographs, equipment, emails, notes, calendar entries documents, audio recordings, involving M. **G.** and his interactions with District staff and other students. The district is unaware of the exact nature of the potential lawsuit, or the claims that will be made.

The District expects all of the abovementioned items to be requested in the course of any potential litigation. The District, therefore, requests you to preserve and maintain any and all electronically stored information (ESI), documents, records, and other tangible things described above relating to M. **G.** until informed otherwise. You should also take steps to prevent the destruction, loss, or alteration of any such materials.

Please contact me directly if you have any questions or concerns.

Sincerely,

Lani Chaffee

Lani Chaffee  
Executive Assistant to the Superintendent  
Bainbridge Island School District  
206 780 1052



**BAINBRIDGE  
ISLAND**

SCHOOL DISTRICT No. 303

STRONG MINDS, STRONG HEARTS, STRONG COMMUNITY

Bainbridge Island School District Office  
8489 Madison Ave NE, Bainbridge Island, WA 98110

## Litigation Hold

From: Lani Chaffee (lchaffee@bisd303.org)

To: msg2x4@yahoo.com

Date: Monday, April 24, 2023 at 02:15 PM PDT

Hi Marcus,

I am confirming the ongoing litigation hold for documents and evidence held by the Bainbridge Island School District regarding the current litigation with the Gerlach family.

Sincerely,

Lani Chaffee

--

Lani Chaffee  
Executive Assistant to the Superintendent  
Bainbridge Island School District  
206-780-1052



**BAINBRIDGE  
ISLAND**

SCHOOL DISTRICT No. 303

STRONG MINDS, STRONG HEARTS, STRONG COMMUNITY

Bainbridge Island School District Office  
8489 Madison Ave NE., Bainbridge Island, WA 98110

## APPENDIX E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY

SUZANNE GERLACH,

Plaintiff,

vs.

No. 23-2-01398-18

SAINBRIDGE ISLAND SCHOOL  
DISTRICT #303, a municipal  
corporation,

Defendant.

DEPOSITION UPON ORAL EXAMINATION  
VIA ZOOM VIDEOCONFERENCE OF  
PETER BANG-KNUDSEN

9:00 a.m.  
Wednesday, July 3, 2024  
Via Zoom Videoconference

BRANDICE L. PIVAR, RPR, CCR  
NORTHWEST COURT REPORTERS  
20819 72nd Avenue South, Suite 625  
Kent, Washington 98032  
(206) 623-6136  
info@northwestcourtreporters.com

1 intimidation, and bullying complaint that was filed with the  
2 Bainbridge Island School District in 2021?

3 A I believe Erin Murphy in coordination with Bainbridge  
4 High School administrators.

5 Q And that's the same Erin Murphy that's an executive  
6 board member of the insurance provider; correct?

7 A That's correct.

8 Q Do you believe that that would be an impartial  
9 individual to investigate a harassing, intimidation, and  
10 bullying complaint?

11 A I do.

12 Q Do you know who eventually provided the investigation  
13 of the harassment, intimidation, and bullying complaint that  
14 was filed for student Marcus Gerlach in 2021?

15 A As I recall, there was an investigator, outside  
16 investigator, who conducted an investigation.

17 Q And that outside investigator, was that Jeff Ganson?

18 A I think that's accurate, yeah.

19 Q Do you know that Jeff Ganson was a prior attorney for  
20 WGRMP?

21 A I don't know the details of his work experience.

22 Q Did you select Jeff Ganson to investigate the HIB  
23 complaint?

24 A No.

25 Q Do you know who did?



1 A My understanding is he's assigned to us.

2 Q Do you know who assigned him to you?

3 A I believe it was WSRMP.

4 Q Okay. All right. So when WSRMP assigns an  
5 investigator, do you want to make sure that that  
6 investigator that's been assigned is impartial? Or do you  
7 just say, "Hey, they've been assigned to me. I'm going to  
8 take whoever's assigned to me"?

9 A We believed Mr. Gansen was in good standing with WSRMP  
10 as an investigator and had experience, so it seemed to be  
11 the appropriate person.

12 Q Do you know he was the attorney that represented the  
13 Mercer Island School District in a case almost -- let's see  
14 -- nine years prior?

15 A I'm aware of it, yes.

16 Q Okay. And with respect to that Procedure 3706, does it  
17 also indicate that the complainant should be interviewed? I  
18 think that's on page 6.

19 Okay. That's it. So it's been underlined as well. Do  
20 you see that? Number 5, "The investigation shall include,  
21 at a minimum, an interview with the complainant."

22 A I do.

23 Q Okay. Do you know whether or not an interview with the  
24 complainant was ever taken?

25 A My understanding, it was not.

**August 02, 2024 - 3:18 PM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** M.G., Appellant v. Bainbridge Island School District, et al, Respondents (583836)

**The following documents have been uploaded:**

- PRV\_Exhibit\_20240802130833SC258647\_6269.pdf  
This File Contains:  
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*The Original File Name was MG v BIRD 583836 II Appendices A E.pdf*
- PRV\_Petition\_for\_Review\_20240802130833SC258647\_5037.pdf  
This File Contains:  
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- matthew.barber@atg.wa.gov
- modonnell@pregodonnell.com

**Comments:**

---

Sender Name: marcus gerlach - Email: msg2x4@yahoo.com  
Address:  
579 STETSON PL SW  
BAINBRIDGE ISLAND, WA, 98110-2551  
Phone: 206-471-8382

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