NO. 1041811

SUPREME COURT OF WASHINGTON

KENDAL LEWIS,
Appellant

v.

WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES,
Respondent

BRIEF OF RESPONDENT

Treated as an Answer to Petition for Review

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I. INTRODUCTION

In August 2019, the Department of Children, Youth, and Families (Department), Child Protective Services (CPS), issued a founded finding of sexual abuse against Kendal Lewis after an investigation concluded his daughter T.L. had made consistent and detailed disclosures of abuse. Mr. Lewis appealed the founded finding, first to the agency and then to the Office of Administrative Hearings (OAH). After a hearing before an administrative law judge (ALJ), a substitute ALJ later wrote an initial order upholding the finding.

Rather than seek further review by the Board of Appeals (BOA), Mr. Lewis filed a Petition for Review directly with superior court. The court properly dismissed the Petition based on the failure to exhaust administrative remedies, and the Court of Appeals affirmed.

Mr. Lewis now seeks review by this Court, contending that he was not required to exhaust administrative remedies because he alleges a violation of his right to due process. But Mr. Lewis

fails to articulate how a due process claim excuses his obligation to exhaust all administrative remedies before seeking judicial review, as required under settled law. Instead, he urges this Court to expand the constitutional exception to exhaustion to include any claim styled as a due process violation. This Court should deny Mr. Lewis's Petition for Review.

II. RESTATEMENT OF THE ISSUE

Must a party exhaust administrative remedies prior to seeking judicial review when a constitutional due process violation is alleged?

III. RESTATEMENT OF THE FACTS

In January 2019, CPS received a report alleging that Mr. Lewis sexually abused his adopted daughter, T.L. Agency Record (AR) 132.[1] T.L. disclosed to her mental health counselor that Mr. Lewis had touched "private parts" of her body multiple times over the course of many years. AR 133; *see* AR 334. CPS

[1] The record on review consists of the clerk's papers, report of proceedings of the superior court motion hearing, and the agency record.

investigated and determined it was more likely than not that abuse occurred and that Mr. Lewis was responsible. AR 132. CPS concluded that T.L.'s consistent and detailed disclosure supported a founded finding of sexual abuse in August 2019. AR 132-33.

Mr. Lewis sought review of the founded finding. AR 142. After a review of the investigation, the Department determined that the finding of sexual abuse was correct and upheld the founded finding in October 2019. AR 144.

Mr. Lewis next requested a hearing for administrative review of the founded finding by the OAH. AR 151. In January 2020, OAH review was stayed at the request of the parties, due to Mr. Lewis's unresolved criminal charges arising from the abuse allegations. AR 126. The parties extended the stay five times. AR 98, 103, 108, 113, 121. In May 2021, a jury acquitted Mr. Lewis of the criminal charges. AR 172-74. With the criminal charges resolved, the ALJ conducted the administrative hearing in February 2022. CP 96-204.

The ALJ who conducted the administrative hearing went on extended leave before issuing a decision. AR 1 n.1, 28. A substitute ALJ issued the initial order on April 22, 2022, concluding that the Department had proven by a preponderance of the evidence that Mr. Lewis had "committed intentional touching, either directly or through clothing, of the sexual or other intimate parts of the child, [T.L.], for the purpose of gratifying his sexual desire." AR 1, 22-23, 27. Based on this determination, the substitute ALJ upheld the Department's founded finding. AR 27, 28.

The OAH served the initial order on the parties by U.S. Mail on April 22, 2022. AR 29. The OAH included with the initial order a notice entitled "Appeal Rights," which outlined how to appeal the initial order to the BOA. AR 30-32. The notice explained that the initial order would become final 21 calendar days after mailing unless: (1) an appeal was filed with the BOA within 21 calendar days; (2) an extension was requested; or (3) a late appeal was filed with good cause within 30 calendar days

after the 21-day deadline. AR 30. The notice warned of the 21-day deadline in multiple places.[2] AR 30, 31, 32.

Mr. Lewis did not submit an appeal to the BOA. *See generally* AR. Instead, Mr. Lewis filed a Petition for Review in Spokane County Superior Court on May 23, 2022. CP 1-5. The Department repeatedly moved to dismiss the Petition for the failure to exhaust administrative remedies, but, due in part to judicial reassignments, the superior court did not hear the motion until October 2023. CP 40, 55, 242, 243; 248; *see* CP 239, 244-47. After a hearing, the superior court granted the motion to dismiss the Petition for Review. RP 15-18; CP 239.

The Court of Appeals affirmed the superior court's dismissal of the Petition for Review, in an unpublished decision.

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[2] The "Appeal Rights" notice emphasized the importance of the deadline for an appeal to the BOA: "The DCYF Board of Appeals **must receive** your appeal within twenty-one (21) calendar days from the mailing date indicated in the enclosed hearing decision. **If you miss the deadline, you may lose all rights to appeal the decision**." AR 32.

Lewis v. Dep't of Children, Youth, & Families, No. 40081-6-III, 2025 WL 1005921 (Wash. Ct. App. Apr. 1, 2025) (unpublished).

IV. ARGUMENT

Mr. Lewis appropriately sought administrative review of the founded finding at the agency and OAH levels. However, when those avenues proved unsuccessful, he did not then seek further review by the BOA, as required by the administrative process, but instead sought judicial review by the superior court. Mr. Lewis now invokes due process to circumvent rules he chose not to follow, but no authority supports his argument that a due process claim permits a party to evade exhaustion. As such, Mr. Lewis's Petition for Review should be denied.

As an initial matter, Mr. Lewis fails to identify a proper basis under RAP 13.4(b) for this Court to grant review. *See generally* Pet. By invoking due process, he presumably relies on RAP 13.4(b)(3), which permits review "[i]f a significant question of law under the Constitution of the State of Washington or of the United States is involved." He also hints at RAP

13.4(b)(4), suggesting a possible issue of substantial public interest. But no matter how the issues are framed, the core of his argument is that a claim of a due process violation excuses him from exhausting administrative remedies, an argument neither novel nor compelling. Mr. Lewis fails to demonstrate this Court's review is merited.

A. Statutes and Regulations Govern the Procedure for Challenging a Founded Finding of Sexual Abuse

In matters involving Department investigations of child abuse, RCW 26.44.125(1) grants the alleged perpetrator in a founded report of child abuse the right to seek review of the finding. *See also* WAC 110-30-0220. First, the person may request review by the Department. RCW 26.44.125(2); WAC 110-30-0230(1). If the Department upholds the finding, the person may then request an adjudicative hearing. WAC 110-30-0280(1); RCW 26.44.125(5); *see* RCW 34.05.413(2)

Chapter 34.05 RCW (the Washington Administrative Procedure Act (APA)) and chapters 110-03 and 110-30 of the Washington Administrative Code govern adjudicative

proceedings for Department-issued founded findings. RCW 26.44.125(5), (7); WAC 110-30-0290. A challenge to an appealable Department action is heard by an ALJ at an administrative hearing. WAC 110-03-0040(4); *see* RCW 34.05.425(1)(c). The ALJ "must decide if a preponderance of the evidence in the hearing record supports a determination that the alleged perpetrator committed an act of abuse or neglect of a child." WAC 110-30-0340(1).

At the conclusion of the hearing, and once the record is closed, the ALJ[3] issues a decision in the form of an initial order. WAC 110-03-0460(1); RCW 34.05.461(1)(c). An "initial order" is a "decision made by an ALJ that may be reviewed by a review judge at any party's request" and must contain findings of fact, conclusions of law, and state the result and the remedy or sanction. RCW 34.05.461(3); WAC 110-03-0020, -0480. The

[3] When, as here, the ALJ who presided at the hearing becomes unavailable before entry of the order, a substitute ALJ is appointed. RCW 34.05.461(6).

initial order must also include "a statement describing available procedures and time limits for requesting changes to the initial order or review by the BOA." WAC 110-03-0480(7); *see* RCW 34.05.461(3). Lastly, the initial order must have "a statement of any circumstances under which the initial order, without further notice, may become a final order." RCW 34.05.461(3); *see* WAC 110-03-0480(8). A "final order" is the final Department decision. WAC 110-03-0020.

For administrative hearings involving the Department, "[a]n ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA." WAC 110-03-0020, 110-03-0490(1)(a). A party can seek BOA review of the initial order by filing a petition for review within 21 days of the date the order was served. WAC 110-03-0510(1), -0520(1); *see* WAC 110-30-0360. The BOA will then assign a review judge to evaluate the initial order. WAC 110-03-0550(2). The review judge has "all the decision-making power that the reviewing officer would have had to decide and enter the final order had the

reviewing officer presided over the hearing." RCW 34.05.464(4). The review judge decides the case de novo, by reconsidering the same evidence and record before the ALJ, and ultimately enters a final order that "affirms, changes, dismisses, or reverses the initial order." WAC 110-03-0510(3), -0550(2), -0550(4), -0560(1); RCW 34.05.464(7). The review judge's order is the final order of the Department. WAC 110-03-0560(4).

A party can appeal a final order by filing a petition for judicial review with the superior court. WAC 110-03-0590(2). A petition for judicial review must be filed within 30 days of the date the final order is served. WAC 110-03-0590(2); RCW 34.05.542(2). However, a party can only file a petition for judicial review once all administrative remedies available within the Department have been exhausted, unless an exception exists allowing a court to relieve the requirement. RCW 34.05.534; WAC 110-03-0590(5). A court can relieve a petitioner of the exhaustion requirement if the remedies would be "patently inadequate," exhaustion would be futile, or "the grave irreparable

harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies." RCW 34.05.534(3). Moreover, a petitioner need not exhaust administrative remedies if a statute states that exhaustion is not required. RCW 34.05.534(2).

B. Dismissal Was Appropriate Because Mr. Lewis Failed To Exhaust All Required Administrative Remedies Prior To Seeking Judicial Review

The Court of Appeals properly affirmed dismissal of Mr. Lewis's Petition for Review. Generally, when the law affords an adequate administrative remedy, that remedy must be exhausted before the courts will intervene. *Wright v. Woodard*, 83 Wn.2d 378, 381, 518 P.2d 718 (1974); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997). Exhaustion requires the petitioner to take advantage of all remedies within the administrative process before seeking judicial relief. *State v. Tacoma–Pierce County Multiple Listing Serv.*, 95 Wn.2d 280, 283–84, 622 P.2d 1190 (1980).

This principle, well-established in Washington law, is based upon the belief that proper deference should be made to bodies with subject matter expertise in areas outside the conventional expertise of judges. *Citizens for Mount Vernon*, 133 Wn.2d at 866; *South Hollywood Hills Citizens Ass'n v. King County*, 101 Wn.2d 68, 73, 677 P.2d 114 (1984). This doctrine prevents premature interruption of the administrative process, promotes efficiency, allows agencies to correct their own errors, and discourages parties from ignoring administrative procedures in favor of judicial review. *Citizens for Mount Vernon*, 133 Wn.2d at 866 (citing *McKart v. United States*, 395 U.S. 185, 193-94, 89 S. Ct. 1657, 1662-63, 23 L. Ed. 2d 194 (1969)); *South Hollywood Hills,* 101 Wn.2d at 73-74. Mr. Lewis's failure to pursue review by the BOA violated this well-settled rule and deprived the agency of the opportunity to address his claims in the manner the law requires.

1. It is undisputed that Mr. Lewis did not exhaust all administrative remedies

It is undisputed that Mr. Lewis chose to eschew review of the initial order by the BOA and instead prematurely seek judicial review. For that reason, the lower courts properly concluded that dismissal was appropriate, and this Court should reach the same conclusion.

Exhaustion is required when: (1) a claim is cognizable in the first instance by an agency alone; (2) the agency has clearly established mechanisms for the evaluation and resolution of complaints by aggrieved parties; and (3) the relief sought can be obtained through administrative remedies. *Multiple Listing*, 95 Wn.2d at 284 (quoting *Retail Store Employees Local 1001 v. Washington Surveying and Rating Bureau*, 87 Wn.2d 887, 906, 907, 909, 558 P.2d 215 (1976)). In other words, "[i]f the administrative mechanisms available can alleviate the harmful consequences of the governmental activity at issue, a litigant must first pursue those remedies before resort to the court." *Orion Corp. v. State*, 103 Wn.2d 441, 456, 693 P.2d 1369 (1985).

CPS issued a founded finding of sexual abuse against Mr. Lewis after determining it was more likely than not that he abused T.L. AR 132-33. This constituted an agency determination. RCW 26.44.030(13)(a). Mr. Lewis appropriately sought review first through the Department then by the OAH. AR 142, 151; RCW 26.44.125(1). After a hearing, a substitute ALJ upheld the founded finding. AR 27, 28. The initial order, served on April 22, 2022, included clear instructions for appealing to the BOA in the "Appeal Rights" notice. AR 29-32.

The Department has a defined procedure for challenging founded findings, and the relief Mr. Lewis sought—overturning the finding—was available through that process. *See*, *e.g.*, RCW 26.44.125; RCW 34.05.464; WAC 110-30-0230, -0280, -0360; WAC 110-03-0040, -0510. By failing to seek BOA review and proceeding directly to superior court, Mr. Lewis did not exhaust his administrative remedies as required by law. Dismissal was appropriate.

2. No statutory exception to the exhaustion requirement exists in this case

The Washington APA provides exceptions to the general requirement to exhaust administrative remedies. As mentioned above, a court can relieve a petitioner of the exhaustion requirement if the remedies would be "patently inadequate," exhaustion would be futile, or "the grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies." RCW 34.05.534(3). A petitioner also need not exhaust administrative remedies if a statute states that exhaustion is not required. RCW 34.05.534(2).

None of those exceptions apply in this case. First, Mr. Lewis cannot show that the remedies would be "patently inadequate." RCW 34.05.534(3)(a). An administrative remedy is patently inadequate when the administrative agency lacks any authority to make or enforce a decision relevant to resolving a party's claim. *Credit Gen. Ins. Co. v. Zewdu*, 82 Wn. App. 620, 626, 919 P.2d 93 (1996); *Multiple Listing*, 95 Wn.2d at 284. A

remedy may be adequate even if it is not complete relief nor the precise relief sought. *Credit Gen. Ins.*, 82 Wn. App. at 625. And "an administrative agency empowered to entertain the type of claim and enforce its decision can supply an adequate remedy." *Id*. at 626 (citing *Citizens for Clean Air v. Spokane,* 114 Wn.2d 20, 28, 785 P.2d 447 (1990)). Here, the Department had the authority, under RCW 26.44.030 and RCW 26.44.125, to hear and grant relief on a challenge to the founded finding. The administrative remedy available to Mr. Lewis was not patently inadequate.

Second, Mr. Lewis cannot show that the exhaustion of remedies would be futile. RCW 34.05.534(3)(b). Courts will not require a party to exhaust administrative remedies if those remedies would be vain and useless. *Orion Corp.*, 103 Wn.2d at 458. For example, in *Orion Corporation* this Court concluded that requiring a landholder to apply for a conditional use permit for aquaculture activities was a vain or useless act for which exhaustion was not necessary, where no such permit would issue

due to incompatibility with state and federal regulations. *Id*. at 459; *see also id*. at 457 ("A willingness to consider an application is irrelevant if there is no hope of success if one is submitted."). In contrast, nothing about Mr. Lewis's appeal to the BOA would have been useless. The BOA possessed the authority to affirm, dismiss, or reverse the ALJ's order or to remand Mr. Lewis's matter for further proceedings. WAC 110-03-0550(4); RCW 34.05.464(7).

Mr. Lewis argues that it "seemed useless to appeal to the Administrative Court of Appeals [the BOA], since they could not address the constitutionality of the decision to not notify Mr. Lewis of [the] change in judge." Pet. at 19. Speculation that further administrative appeal would be futile is insufficient to establish futility. *Buechler v. Wenatchee Valley Coll.*, 174 Wn. App. 141, 154, 298 P.3d 110 (2013). Irrespective of any alleged due process violation, the BOA would have considered anew whether a preponderance of the evidence supported the founded finding of sexual abuse. Mr. Lewis objected to the founded

finding; the BOA could have granted Mr. Lewis the relief he desired. Had the BOA not granted relief, Mr. Lewis could have then sought judicial review.

Third, Mr. Lewis cannot show that the "grave irreparable harm" that would result from having to exhaust all administrative remedies would outweigh the public policy requiring exhaustion of administrative remedies. RCW 34.05.534(3)(c). For one, Mr. Lewis fails to articulate any "grave irreparable harm" that would result from requiring him to appeal the ALJ's ruling to the BOA. Further, public policy strongly supports exhaustion, particularly where it would have resulted in a more efficient, expedient process and allowed the Department to correct any alleged errors. *See Citizens for Mount Vernon*, 133 Wn.2d at 866.

Finally, Mr. Lewis fails to show that any statutory language relieves him of the exhaustion requirement. RCW 34.05.534(2). Indeed, he does not even make this argument. The statute plainly requires exhaustion of administrative remedies.

3. A due process claim does not exempt Mr. Lewis from the exhaustion requirement

Mr. Lewis asserts that parties can avoid the exhaustion requirement if they simply raise a due process claim. Not so. While courts have relieved parties of the exhaustion requirement when they raise constitutional claims against statutes or agency actions, this Court should not extend that principle to allow a party to bypass the administrative process for every constitutional claim, including alleged procedural errors during the administrative proceeding. Mr. Lewis's complaint does not allow him to dodge compliance with the APA.

Courts have found nonstatutory exemptions to the exhaustion requirement in limited circumstances. Specifically, in cases where "the issue presented is the validity of the agency itself," exhaustion will not be required. *Higgins v. Salewsky*, 17 Wn. App. 207, 213, 562 P.2d 655 (1977) ("An administrative agency does not have the authority to decide the validity of the law under which it operates."). Similarly, a party need not exhaust administrative remedies when they claim, as a defense,

that the statute underlying an administrative action is unconstitutional. *Yakima County Clean Air Auth. v. Glascam Builders, Inc.*, 85 Wn.2d 255, 257, 534 P.2d 33 (1975); *Ackerley Commc'ns, Inc. v. City of Seattle*, 92 Wn.2d 905, 908, 602 P.2d 1177 (1979)).

Mr. Lewis does not challenge the validity of the Department itself, nor does he challenge the constitutionality of the statute underlying his founded finding and his available remedies. Instead, Mr. Lewis asserts that because "constitutional issues cannot be adjudicated by an administrative court" and because he raises an issue of constitutional due process, he did not need to exhaust all administrative remedies before seeking judicial review. Pet. at 16, 18. But the legal authority he provides does not support his position.

Mr. Lewis relies on *Yakima Clean Air*, 85 Wn.2d at 257, for the proposition that exhaustion is "wholly misapplied when invoked against one not seeking equitable relief but merely defending himself against a regulation or order asserted to be

invalid." Pet. at 8, 14, 17. But that case is inapposite, as it involved a due process challenge to the regulation and statute providing the basis for a penalty in an enforcement action. *See id*. at 257, 259. This Court concluded that the appellant was not required to exhaust its administrative remedies before challenging the enforcement action, as "one claiming a constitutional right as a defense can proceed directly to assert that right in a judicial proceeding." *Id*. at 257. Furthermore,

> An administrative tribunal is without authority to determine the constitutionality of a statute, and, therefore, there is no administrative remedy to exhaust. The administrative remedy is established by the same statute which is being challenged and recourse to an administrative remedy would put the respondent in the position of proceeding under the statute which it seeks to challenge.

Id.

In contrast to that case, Mr. Lewis does not challenge a statute or Department regulation as an unconstitutional violation of due process and does not challenge the Department's interpretation of a statute. Mr. Lewis is not claiming a

constitutional right as a defense but instead claims that the failure to provide him notice of the substitute ALJ during his adjudicative proceeding constituted a violation of due process. Such a procedural claim does not preclude him from exhausting his administrative remedies before seeking judicial review, and *Yakima Clean Air* does not provide a basis to conclude otherwise.

Mr. Lewis next relies on *Ackerley* to claim that if a "party is challenging the constitutionality of the agency's action or of the agency itself, the exhaustion requirement will be waived." Pet. at 12 (quoting *South Hollywood Hills,* 101 Wn.2d at 74 (citing *Ackerley*, 92 Wn.2d 905)). *Ackerley* involved a pre-enforcement constitutional challenge to a Seattle city ordinance regulating billboards and signs. *Ackerley*, 92 Wn.2d at 907-08. This Court concluded that the plaintiffs had no standing to raise a constitutional issue or maintain their action for relief due to their failure to exhaust administrative remedies by seeking variances to the city ordinance. *Id*. at 908-09. In doing so, it rejected the argument that constitutional issues cannot be

disposed of by the administrative appeal process. *Ackerley*, 92 Wn.2d at 908; *see* Pet. at 16. It drew a distinction between a party subject to an enforcement action, where exhaustion is not required, and a party seeking affirmative relief, where exhaustion is required. *Ackerley*, 92 Wn.2d at 908-09.

The cases relied on by Mr. Lewis all concerned challenges to the constitutionality of a statute or an agency action. An "agency action" statutorily means "licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits." RCW 34.05.010(3). Mr. Lewis's procedural challenge to the substitution of an ALJ during an administrative proceeding does not fall within this definition.

Mr. Lewis offers no other relevant authority for his position. Mr. Lewis misinterprets *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998), when he asserts that "providing no notice whatsoever, of a substantial right, has been found to be a constitutional due process violation." Pet. at

7. In *Mission Springs*, after the Spokane City Council voted to withhold a grading permit for an apartment complex despite the developer satisfying building ordinance requirements in effect at the time of the permit application, this Court concluded that the City Council arbitrarily and unlawfully withheld the grading permit because the City Council's action deprived the developer of a constitutionally cognizable property right in the permit through arbitrary interference with the process lawfully due. *Mission Springs*, 134 Wn.2d at 952-59, 962-64.

Mr. Lewis unpersuasively relies on *Lemire v. Dep't of Ecology*, Pollution Control Hearings Board (PCHB) No. 09-159 (Order Granting Motion to Dismiss and Motion for Summary Judgment, Oct. 27, 2010). *See* Pet. at 18. There, the Department of Ecology took administrative action against a landowner over concerns that a stream running through the property had poor water quality due to unfenced livestock. *Lemire*, No. 09-159, at 2-5. In its Order, the PCHB dismissed some of the landowner's claims on the basis that it lacked subject matter jurisdiction over

constitutional claims of substantive due process, governmental takings, and the right to privacy. *Id*. at 7-8. In a footnote, the PCHB cited to *Inland Foundry Co., Inc. v. Spokane County Air Pollution Control Authority*, PCHB No. 94-154, a case in which the PCHB addressed and denied constitutional due process and equal protection challenges. *Id*. at 8 n.2; *Inland Foundry*, No. 94-154, at 4 (Order Granting Summary Judgment, Mar. 20, 1995). *Lemire* and *Inland Foundry* do not mention exhaustion in any form, likely because a PCHB order is a final decision, and an aggrieved party may seek judicial review from the final decision. WAC 371-08-535; RCW 43.21B.180; RCW 34.05.518(1)(a)(ii). The PCHB's discussion of constitutional jurisdiction in those cases do not provide support for Mr. Lewis's assertion that administrative courts cannot adjudicate constitutional questions.

Mr. Lewis's citation to *K.P. McNamara Northwest, Inc. v. Dep't of Ecology*, 173 Wn. App. 104, 292 P.3d 812 (2013), is similarly unavailing. *See* Pet. at 18. In *McNamara*, an appeal from a PCHB summary judgment order related to dangerous

waste, the PCHB allegedly engaged in unlawful procedure by exceeding the scope of a legal issue identified by the parties at a prehearing conference. *McNamara*, 173 Wn. App. at 119, 132-33. While *McNamara* noted that an appellate court may grant relief if an agency has engaged in unlawful procedure, *id.* at 121 (citing RCW 34.05.570(3)(c)), it certainly does not stand for the proposition that "constitutional issues cannot be adjudicated by an administrative court," as suggested by Mr. Lewis. Pet. at 18.

Mr. Lewis simply failed to exhaust all administrative remedies available to him and no exception exists to alleviate the requirement for exhaustion. He provides no persuasive authority in support of his broad proposition that a claim of a due process violation allows a party to avoid the requirements of the APA. This Court should deny Mr. Lewis's Petition for Review.

C. The Only Issue Before This Court Is Whether Mr. Lewis's Due Process Claim Excused His Failure To Exhaust All Required Administrative Remedies Prior To Seeking Judicial Review

Mr. Lewis attempts to broaden the scope of this Court's review by asserting that a substitute ALJ should not have the

authority to decide an administrative proceeding if that ALJ did not preside over the hearing. *See* Pet. at 6-7, 15-16. Insofar as he argues that a substitute ALJ must convene a new hearing if appointed after the original hearing was completed, Pet. at 8-10 (citing *WESCO Distribution, Inc. v. M.A. Mortenson Co.*, 88 Wn. App. 712, 946 P.2d 413 (1997)), 15 (citing a 1989 federal Merit Systems Protection Board opinion), the APA explicitly provides:

> If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

RCW 34.05.461(6). This argument, first raised by Mr. Lewis in his Reply Brief to the Court of Appeals, only serves to divert this Court's attention from the sole issue presented here: whether Mr. Lewis's claim of a due process violation excused his failure to exhaust all administrative remedies.

V. CONCLUSION

Mr. Lewis failed to exhaust all administrative remedies prior to seeking judicial review of his founded finding in superior court. No exemption to the exhaustion requirement, statutory or otherwise, applies to his case. Mr. Lewis's Petition for Review should be denied.

This document contains 4,578 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 11th day of July, 2025.

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CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true and correct copy of the Department of Children, Youth, and Families' Brief of Respondent to the following address:

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DATED this 11th day of July, 2025, at Spokane, Washington.

Deanna Marengo
Paralegal

SPOKANE DIVISION - SHS / AGO

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