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SUPERIOR COURT OF WASHINGTON
IN THE COUNTY OF KING

SHELLY WILLIAMS ET. AL,)	
)	
Appellants,)	NO. 09-2-10804-8 SEA
)	
v.)	OPPOSITION TO MOTION
)	FOR SUMMARY JUDGMENT
SEATTLE SCHOOL DISTRICT NO. 1)	
)	
Respondent.)	
)	

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1 **I. INTRODUCTION**

2 The case is about whether Seattle School District No. 1's ("the District") Board of
3 Directors ("School Board") acted arbitrarily, capriciously, or contrary to law when it
4 determined to close five school buildings and make nine programmatic changes on January
5 29, 2009. The evidence supports one clear ruling: that the School Board did not act
6 arbitrarily, capriciously, or contrary to law.
7

8 The Appellants filed this lawsuit to challenge a programmatic change.¹ A
9 programmatic change is not subject to the requirements of the state statute on school
10 closures, RCW 28A.335.020. Appellants claim that not treating a programmatic change as a
11 school closure resulted in impacted persons not getting notice or the opportunity to be heard.
12 What Appellants fail to acknowledge to the Court is that they all actually provided testimony
13 at public hearings and School Board meetings related to the decisions they are challenging.
14

15 Appellants had not only ample notice and opportunity to be heard, they were actually
16 heard. However, the elected School Board, after consideration of thousands of pages of
17 documents and the input of hundred of citizens, made a choice that the Appellants dislike.
18 That is not the proper basis for a legal challenge, particularly when considering the
19 substantial deference that must be afforded to the School Board in making administrative and
20 policy decisions. As such, the District respectfully requests that the Appellants' Motion be
21 denied, and that the School Board's decision be upheld.
22
23

24 **II. STATEMENT OF FACTS**

25
26 ¹ Appellants' continue to incorrectly indentify the Parties to this action as "Plaintiffs" and "Defendant" due to
27 their initial misidentification of this case under the Court's original jurisdiction. The District will continue to use
28 the proper terms of "Appellant" and "Respondent." It is also noted that to date Appellants have failed to obtain
"the appropriate Case Scheduling Order for this Administrative Appeal," despite being directed by the Court to
due so on April 9, 2009. *Order Denying Motion for Expedited Review.*

1 A. Identification of the Need for the District to Effectively Manage its Resources

2 The District has been engaged in very public efforts to ensure the effective and
3 efficient use of its resources, and in particular the use of its school buildings, for several
4 years. Between the 1960s and the present, enrollment in the District declined from more than
5 100,000 to about 45,000 students, though the District has only reduced its overall number of
6 school buildings from 121 to 92. See *TE*² at 7, 850. In 2005, then-Superintendent Raj
7 Manhas formed a blue-ribbon panel Community Advisory Committee on Investing for
8 Educational Excellence (CACIEE) to provide recommendations on establishing short- and
9 long-term fiscal stability for the District in support of academic achievement. *Id.* at 307-64.
10 This group was among the first of numerous experts to recommend that the District consider
11 school closures and the effective use of school buildings “to accurately fit current student and
12 enrollment and projected future enrollment.” *Id.* at 330. The Committee remarked that:

15 Seattle has significant excess capacity within its existing,
16 operational facilities. This drains resources from every school in
17 the District. Dollars expended on facilities come at the expense
18 of dollars invested in curriculum and teaching. Closing excess
19 facilities would enable the District to re-direct valuable
20 resources towards investments in academic improvements that
could ensure a quality school in every neighborhood. Even if
the District were not struggling financially, it would still be
sound strategy to align capacity with enrollment.

21 *Id.* In July of 2006, the School Board approved the closure of seven school buildings, along
22 with the merger and relocation of several educational programs, in an effort to remedy the
23

24 _____
25 ² RCW 28A.645 expressly provides only for the submission of “the transcript of the evidence and the papers and
26 exhibits relating to the decision for which a complaint has been filed.” The District timely submitted a
27 Transcript of Evidence comprised of 2318 pages of documents and six digital video disks. As in any
28 administrative review under the arbitrary, capricious, or contrary to law standard, the Court is to make its
determination based upon a review of the administrative record considered by the agency. *C.f. Wn. Independent
Tel. Ass’ v. Wn. Util. & Transp. Comm’n*, 110 Wn.App. 498, 518, 41 P.3d 1212 (2002), *aff’n*, 149 Wn.2d 17, 65
P.3d 319 (2003). Thus, when considering Appellants’ Motion, the Court is limited to reviewing the Transcript of
Evidence, which is cited herein as “TE.”

1 disparity between the District’s physical capacity and student enrollment, and its correlative
2 negative impact on the District as a whole. *TE 159.*

3
4 In June 2008, after the arrival of current Superintendent Dr. Maria Goodloe-Johnson,
5 the School Board unanimously approved a five-year strategic plan created with the input of
6 thousands of community members entitled *Excellence for All*. *TE 1-122.* One of the key
7 commitments made in *Excellence for All* is that “We will work within our means.” *Id. at 7.*
8 Specific areas of action highlighted as critical to the achievement of District goals included:

9
10 The district must address a longstanding imbalance in
11 classroom capacity – overall and relative to where students live.
12 It is neither financially sustainable nor is it meeting the needs of
13 all of our families. The district is looking at a three-part, multi-
14 year solution to the issue: (1) revise the student assignment plan
15 to reflect demographic shifts, provide greater predictability, and
16 create consistent reference areas and patterns of school
programs.

17 *Id. at 153.*

18 That the closure of the seven school buildings and merger and relocation of several
19 educational programs in 2006 failed to eliminate the District’s excess capacity concerns was
20 identified by numerous subsequent audits. *TE 159.* Phi Delta Kappa International, in its
21 January 2008 Curriculum Audit recommended that the “Superintendent [] prepare a school
22 closing and merger plan to better utilize existing facilities.” *TE at 737.* An audit of the
23 District’s capital programs conducted by the Council of Great City Schools over the summer
24 of 2008 directed the District to: “Conduct a Capacity Management Study to evaluate the
25 district’s excess building capacity and create a master plan for the closure of underutilized
26 facilities.” *Id. at 779.* The Washington State Auditor’s Office, in a September of 2008 audit
27
28

1 of the state's ten largest school districts, found that "Seattle School District has more
2 classrooms that it needs and should reduce the number of school buildings to lower
3 administrative and maintenance costs," and that excess capacity was "an operations and
4 maintenance money drain" that the District cannot afford. *Id.* 851-52.

6 B. The School Board Directs Further Capacity Management Work be Done

7 In the fall of 2008, the District learned it would be facing an at least \$24 million
8 budget shortfall for the 2010 fiscal year. *TE at 131.* For the 2008 and 2009 fiscal years, the
9 District had already had to rely on reserves to close existing gaps in funding. *Id.* This stark
10 fiscal reality, coupled with the audit recommendations that excess capacity was significantly
11 draining fiscal resources, led the School Board to unanimously approve a Resolution
12 directing the Superintendent to evaluate balancing the geographic capacity needs across the
13 District on October 29, 2009. *Id.*

15 Passing such a Resolution was not a necessary requirement under either School Board
16 Policy H01.00, which sets forth the District's procedure for closing school buildings, nor
17 under RCW 28A.335.020, the state statute that underlies the District's procedure. *TE 144-*
18 *46.* The passage of this Resolution instead reflected agreement by the School Board that it
19 was facing a significant fiscal crisis that needed to be averted, and that the School Board
20 wished the Superintendent and her staff to undertake preliminary work prior to beginning a
21 closure effort. *Id. at 121-27.*

24 One of the specific tasks the School Board directed be done prior to beginning a
25 closure effort was a revision of School Board Policy H01.00. *TE at 131.* This revision was
26 adopted by the School Board, again by a unanimous vote, on November 12, 2008. *Id.* at 140-
27 50. In addition to updating notice provisions that already exceeded the statutory
28

1 requirements to account for technology changes, the School Board clarified that H01.00
2 would apply to the closure of “school buildings(s) for instructional purposes,” language that
3 reflects the language of RCW 28A.335.020. *Compare* TE at 144 *with* RCW 28A.335.020.
4

5 C. The Closure Process is Initiated with the Issuance of Preliminary Recommendations

6 The first step the closure process identified in School Board Policy H01.00 is the
7 “development and presentation of the Superintendent’s preliminary recommendation for
8 school closure(s).” *TE at 144*. On November 25, 2008, Dr. Goodloe-Johnson took this first
9 step by presenting a 146 page *Preliminary Recommendations on School Building Closure*
10 *and Program Relocations*³ (“Preliminary Recommendation”). *TE at 151-296*. The
11 Superintendent identified the guidelines used in reaching her recommendations:
12

- 13 ➤ Do programs need to ***move to other areas*** of the district to improve equity and access
14 to these programs?
- 15 ➤ Do programs ***need to be added in areas*** of the district to improve equity and access to
16 these programs?
- 17 ➤ How will closures or program moves affect **student learning** and the district’s **fiscal**
18 **health**?
- 19 ➤ **Geographic Need** – How do we balance capacity across the district to ensure
20 appropriate number of seats in each geographic area?
- 21 ➤ **Building Condition** – What is the quality and condition of the building? (using
22 MENG survey score⁴ – including cost of maintenance, lot size, etc.)
- 23 ➤ **Cost per Pupil** – Are the non-instructional costs per student higher than the district
24 average? (looks at core staffing & administrative mitigation)
- 25 ➤ **Proximity** – Are there other schools close by serving the same grade levels?

26 ³ School Board Policy F21.00, available online at <http://www.seattleschools.org/area/policies/f/F21.00.pdf>
27 identifies that the Superintendent holds the authority to make programmatic decisions. Thus, while the consent
28 of the School Board was sought – and ultimately obtained - in relation to the program changes recommended
along with the proposed school building closures, such consent was not a necessary requirement.

⁴ In 2005 and 2006, a survey of the conditions of the District’s buildings was done by Meng Analysis. The
survey generated a numerical score of the quality and condition of each of the District’s buildings on a scale of 1
to 100. In the 2009 closure process, buildings with a condition below 79 were candidates for closure, while
buildings with better conditions were possible candidates for repurposing. *TE at 165-166*.

1 ➤ **Academic Performance** – Has the school made the expected annual academic
2 progress under the federal No Child Left Behind law?

3 *Id. at 164-65* (emphasis in original).

4 The Preliminary Recommendations proposed the closure of seven school buildings
5 for instructional purposes, as well as the relocation of several programs. One of the buildings
6 recommended for closure was the Genesee Hill building, which currently houses the
7 Pathfinder K-8 program. *TE at 190*. The Genesee Hill building was identified as being in
8 poor condition, with a Meng score of 46.81. *Id.* The Pathfinder program is both the only
9 alternative program and the only K-8 in West Seattle. *Id.* Thus, while the Genesee Hill
10 building was a logical candidate as a building to be closed for instructional purposes,
11 discontinuing the Pathfinder program was contrary to the goals of ensuring equitable to
12 educational programs. *Id.* Consequently, in order to facilitate the closure of the Genesee Hill
13 building while still maintaining an alternative program and K-8 in West Seattle, the
14 Superintendent recommended relocating the Pathfinder program. *TE at 191*. Two existing
15 West Seattle buildings were identified as candidates to be repurposed to house the Pathfinder
16 program: the Arbor Heights and Cooper buildings.⁵ *Id.* It was identified that the School
17 Board would need to alter existing student assignment provisions to facilitate the relocation
18 of the Pathfinder program to the Cooper building. *Id at 192*.

22 D. The District Gathers Public Input

23 The District created summaries of the Preliminary Recommendations, along with
24 summaries of all options considered prior to the School Board decisions, which were posted
25 online and sent to all district families. *TE at 1215-18, 1335-39, 1939-42*. These summaries
26
27
28

1 all included a “HOW CAN I GET INVOLVED?” section with information regarding
2 opportunities to be heard at meetings or submit written commentary:

3 **HOW CAN I GET INVOLVED?**

4 Review and community input will take place during the next two months and will end with a School
5 Board vote that is scheduled for January 29, 2009. Families, staff and community members are
6 encouraged to comment on the preliminary recommendations. Opportunities for public comment
include:

Date	Time	Type of Meeting	Location
December 3	6:00 p.m.	School Board meeting	John Stanford Center for Educational Excellence
December 4	6:30-8:30 p.m.	Community workshop	John Stanford Center for Educational Excellence
December 6	9:30-11:30 a.m.	Community workshop	Filipino Community Center: 5740 MLK Jr. Way
December 15	6:30-8:30 p.m.	Public hearing**	T. T. Minor – 1700 E. Union St. Pinehurst – 11530 12 th Ave. N.E. Van Asselt – 7201 Beacon Ave. S.
December 16	6:30-8:30 p.m.	Public hearing**	Genesee Hill – 5012 S.W. Genesee St. Mann – 2410 E. Cherry St. Old Hay – 411 Boston St.
December 17	6:00 p.m.	School Board meeting	John Stanford Center for Educational Excellence
December 18	6:30-8:30 p.m.	Public hearing**	Lowell – 1058 E. Mercer St.
January 7	6:00 p.m.	School Board meeting	John Stanford Center for Educational Excellence
January 21	6:00 p.m.	School Board meeting	John Stanford Center for Educational Excellence
January 22	TBD	Public hearing	John Stanford Center for Educational Excellence
January 29	6:00 p.m.	School Board vote	John Stanford Center for Educational Excellence

17 ...
18 Additional information is available at www.seattleschools.org/area/capacity. Comments or questions on the
19 recommendation can be emailed to capacity@seattleschools.org or to schoolboard@seattleschools.org, or mailed
to School Board, PO Box 34165, MS 11-010, Seattle, WA, 98124-1165. School Board office: (206) 252-0040.

20 *TE at 1215, see also id. at 1339, 1942.* As indicated, the District also maintained a website
21 dedicated to this process, posting all related materials online, as well as creating and updating
22 a “Frequently Asked Questions” (“FAQ”) document. *TE at 2035-47.*

23 On December 15 and December 16, 2008, seven site-specific hearings were held at
24 school buildings proposed for closure in the Superintendent’s Preliminary
25

26
27 ⁵ One of the most blatant misrepresentations in Appellants’ Motion is a claim that “Cooper School was not
28 mentioned ... in any manner” in the Superintendent’s Preliminary Recommendations. The option of moving the
Pathfinder program into the Cooper building was discussed in the Preliminary Recommendations. *TE at 191-92.*

1 Recommendations.⁶ *TE at 1158*. Testimony from each of the hearings was recorded by a
2 court reporter, and then posted online at the District's Capacity Management website.⁷ *Id at*
3 *1376-1747*. Pursuant to RCW 28A.335.020, notices for these hearings were published
4 weekly for two consecutive weeks in two newspapers of general circulation. *Id. at 2279-80*.
5 Pursuant to H01.00's direction for additional outreach beyond the statutory minimum, the
6 District ran notices in nine local community newspapers (including the local Spanish-
7 language newspaper); sent notices to all current families through U.S. mail; posted the
8 hearing schedule on the District's website; ran public service announcements on television
9 and radio; and distributed flyers for posting throughout the community. In addition to the
10 site-specific hearings, the District hosted two community workshops on December 4 and 6,
11 2008, which were attended by approximately 300 community members. *TE at 1156, 1756*.
12 Further, individual meetings were hosted by Principals and Instructional Directors for each
13 building and program identified in the Preliminary Recommendations, to allow time for
14 specific conversations. *Id. at 1157*. Additionally, the District took testimony related the
15 Preliminary Recommendations at its regularly scheduled School Board meetings. *Id. at 1159*.

16
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18
19 With respect to the recommendation to close the Genesee Hill building for
20 instructional purposes, a site-specific hearing was held at the Genesee Hill building on
21 December 16, 2008. *TE 1629-1706*. Numerous speakers at this hearing identified themselves
22 as being affiliated with Cooper. *Id.* **In fact, all three of the Appellants in this case, Shelly**
23 **Williams, Charity Dumas, and Joy Anderson actually provided testimony at the**
24 **December 16, 2008 hearing.** *Id. at 1666-68; 1647-49; 1677-79*.

25
26
27 ⁶ Due to inclement weather, the hearing at the Lowell building was held on January 20, 2009. *TE at 2048-2114*.
28

1 E. The Board Provides Feedback, the Superintendent Issues Final Recommendations, and
2 the District Gathers Additional Public Input

3 After the issuance of the Preliminary Recommendations, the School Board held
4 workshops on November 25, 2008 and December 9, 2008, which were open to the public. *TE*
5 *at 1159*. At these workshops, the School Board provided direction about options that they
6 wished be considered, including repurposing the Cooper building to house the Pathfinder
7 program rather than the Arbor Heights building. *Id. 1241*. The Superintendent, the Chief
8 Academic Officer, and Chief Operating/Financial Officer also presented the School Board
9 with updates at the December 3 and 17, 2008 School Board Meetings. *1222-50, 1345-72*.
10 These meetings were open to the public, broadcast on television, and available online.
11

12 On January 6, 2009, the Superintendent completed the next step required under
13 School Board Policy H01.00, the “Presentation of the Superintendent’s final recommendation
14 for school closure(s).” The Superintendent’s *Final Recommendations on Building Closure*
15 *and Program Relocation* (“Final Recommendations”) were contained within a 188 page
16 report intended to provide the School Board with an analysis as to the effects of the proposed
17 closures and programmatic changes. *TE at 1750-1938*. The closure of five school buildings
18 for instructional purposes and nine programmatic changes were recommended. *Id. at 1752*.
19

20 In the Final Recommendations, the Superintendent continued to recommend that the
21 Genesee Hill building be closed for instructional purposes, and that the Cooper building be
22 repurposed to house the Pathfinder program rather than the Arbor Heights building. Many
23 individuals - **including the Appellants** - had already provided testimony and feedback about
24 this option at prior hearings and workshops. *See e.g. TE at 1666-68; 1647-49; 1677-79*
25
26

27 _____
28 ⁷ RCW 28A.335.020 only mandates that public hearings be held; the District’s election to transcribe these
hearings was wholly voluntary.

1 (Appellants' testimony at Dec. 16, 2008 hearing); 1264-1266 and 1267-1270 (summary of
2 feedback from public workshops). A further opportunity to be heard was created when the
3 District hosted a community meeting at the Cooper Building on January 13, 2009, which was
4 attended by School Board Director Steve Sundquist. *See id. at 1157, 1756.* Testimony from
5 individuals affiliated with Cooper, **including Appellant Williams**, was also taken at the
6 School Board's January 7, and January 21, 2009 meetings. *Id. 2014, 2162.*

8 After the release of the Superintendent's Final Recommendations, a final general two-
9 hour public hearing was held on January 22, 2009. *TE at 2164.* Notice was given for this
10 hearing in the same manner as was given for the site-specific hearings. *Id. at 2281-82.*
11 Testimony was taken from 40 speakers, 10 of whom spoke regarding the proposal to
12 repurpose the Cooper building to house the Pathfinder program. *Id. at 2165-2240.* The
13 District also collected hundreds emails, making them available for public review and posting
14 summaries of the feedback online. *Id. at 1756, 2241-45.* These included numerous emails
15 related to the proposed closure of the Genesee Hill building and the repurposing of the
16 Cooper building to house the Pathfinder program. *Id. 2241, 2249-50, 2252-53.*

19 F. The School Board Vote and Implementation

20 On January 29, 2009, the School Board voted 5-2 to close five buildings for
21 instructional purposes, and to approve nine programmatic changes. *TE at 2277-78.* This
22 meeting was open to the public, was aired on television, and was available for viewing online.
23 The School Board's ultimate decision was not identical to the Final Recommendations, as
24 several amendments were offered and passed. *Id.* A motion to amend the Final
25 Recommendations to remove the closure of the Genesee Hill building failed 2-5. *Id.*

1 In making its January 29, 2009 decisions, the School Board directed immediate
2 implementation of actions necessary to carry out the five building closures and nine
3 programmatic changes. *TE at 1969, 1973, 1976.* The District has now already completed its
4 enrollment of students for the 2009-2010 school year, assigning students in a way that reflects
5 the building closures and programmatic changes. *Id. at 2012.* Staff have also been assigned
6 for the 2009-2010 school year in a way that reflects the closures and programmatic changes,
7 pursuant to the terms of the District's various Collective Bargaining Agreements. *Id.*

8
9 The District expects to see substantial general fund and capital savings as a result of
10 the School Board's January 29, 2009 decisions. General fund savings, which include staff
11 reductions, utilities, and non-capital maintenance savings, will begin in the 2009-10 year and
12 will continue, as long as the buildings designated for closure are not reused for instructional
13 purposes. *TE at 1753.* The five-year general fund net benefit is estimated to be \$16.2 million
14 dollars. *Id.* Net Capital Fund savings, which include deferment of scheduled capital
15 improvement projects and elimination of capital maintenance expense of closed buildings, are
16 projected through 2011 to be over \$33 million dollars. *Id.*

17 18 19 **III. STANDARD OF REVIEW**

20 This action is an appeal raised pursuant to Revised Code of Washington Chapter
21 28A.645, a statutory provision that grants a Superior Court appellate jurisdiction to conduct
22 an administrative review of a decision by a school board. Appellants plainly disagree with the
23 School Board's decisions related to the management of its buildings. That disagreement does
24 not provide a basis for a challenge to the District's policies and decisions regarding school
25 closures, or decisions regarding the location of educational programs:
26
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28

1 It is fundamental that no one can have a vested right in any
2 general rule of law or policy of legislation which entitles him to
3 insist that it remain unchanged for his benefit. ... **The general
4 rule is that no one has a vested right to be protected against
5 consequential injuries arising from a proper exercise of
6 rights by others. This rule is especially applicable to
7 injuries resulting from the exercise of public powers. . . .**

8 *Citizens Against Mandatory Bussing v. Palmason* 80 Wn.2d 445, 452-53, 495 P.2d 657
9 (1972) (emphasis added).

10 In a nut shell, **this whole controversy arises over a question
11 of judgment. The petitioners before the board, the appellants
12 here, are not in agreement with the members of the board.
13 That disagreement of itself is not for the courts. The law
14 has plainly vested the board of directors of school district
15 such as this with discretionary powers** in such matters, and
16 the directors having examined into and passed upon the matter
17 in the exercise of their discretion, the courts have no right or
18 power to review the conclusions reached by them as a board in
19 the absence of a showing of abuse of discretion on their part,
20 which is not the case here.

21 *State ex. rel. Lukens v. Spokane School District*, 147 Wn. 467, 474, 266 P. 189 (1928)
22 (emphasis added). Consequently, the ability to challenge a school board's decisions related to
23 the use of its buildings is available only through RCW 28A.645.030, the statute that gives
24 substantial deference to the elected School Board and its discretionary decision making
25 power.

26 Despite the facial language of RCW 28A.645.030, this Court will **not** be making a de
27 novo review of the School Board's capacity management decisions. True de novo review is
28 only available under RCW 28A.645 for quasi-judicial decisions made by school boards or
school officials. *Haynes v. Seattle School Dist. No. 1*, 111 Wn.2d 250, 253-54, 758 P.2d 7
(1988), *cert. denied*, 489 U.S. 1015 (1989); *Yaw v. Walla Walla Sch. Dist.*, 106 Wn.2d 408,

1 413, 722 P.2d 803 (1986). Decisions related to the management of district buildings and
2 programs are clearly administrative or policy-making decisions, not quasi-judicial decisions.

3
4 In reviewing an administrative or policy-making decision of a school board, such as a
5 decisions regarding the most effective use of District properties, the Superior Court is to use
6 the traditional administrative review standard of **whether the school board acted in a**
7 **manner that was arbitrary, capricious, or contrary to law.** *Haynes*, 111 Wn.2d at 253-55;
8 *Yaw*, 106 Wn.2d at 413 (citing *Francisco v. Bd. of Dirs. of Bellevue Pub. Schs.*, 85 Wn.2d 575
9 578-79, 537 P.2d 789 (1975)); *see also Coughlin v. Seattle Sch. Dist. 1*, 27 Wn. App. 888, 621
10 P.2d 183 (1980); *Lane v. Ocosta Sch. Dist. 172*, 13 Wn. App. 697, 537 P.2d 1052 (1975). It
11 is important to note that **“This standard is highly deferential to the administrative fact**
12 **finder.”** *Motley-Motley, Inc. v. State*, 127 Wn.App. 62, 72, 110 P.3d 812, 818 (2005) (citing
13 *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d
14 133 (2000)) (emphasis added). Thus, in considering this motion, as is required for summary
15 judgment under Rule 56, all reasonable inferences must be drawn in the favor of the District
16 as the non-moving party, **and** the Court must also provide substantial deference to the School
17 Board as the administrative fact finder, and only overturn the School Board’s decision if it
18 was arbitrary, capricious, or contrary to law.
19
20
21

22 **IV. POINTS AND AUTHORITY**

23 A. The School Board Policy on School Closures Comports with RCW 28A.335.020

24 Appellants make numerous assertions about violation of Washington’s law regarding
25 school closure; however, when the Court considers the plain language of the statute and the
26 facts as set forth in the Transcript of Evidence, giving the School Board the requisite high
27 deference as the tribunal of original determination, there is no basis to overturn the School
28

1 Board's decision as being contrary to law. *C.f. King County v. Central Puget Sound Growth*
2 *Management Hearings Bd.*, 142 Wash.2d 543, 553 (2000) (determining that a reviewing court
3 must give "substantial weight to the Board's interpretation of the statute it administers.").

4
5 1. The Seattle School Board Has a Policy on the Closure of School Buildings

6 RCW 28A.335.020 mandates that "Before any school closure, a school district board
7 of directors shall adopt a policy regarding school closures which provides for citizen
8 involvement before the school district board of directors considers the closure of any school
9 for instructional purposes." There is no dispute that the Seattle School Board adopted School
10 Board Policy H.01.00, its policy regarding school closures in 1996, thirteen years before the
11 January 29, 2009 decision to close school. *TE 144-47*. There is also no dispute that H.01.00
12 was amended in 1997, to remove the application of the policy to the temporary relocation of
13 students and staff during periods of school building reconstruction or renovation. *Id.*

14
15 Thus, the only apparent dispute is if the School Board, by unanimously voting to
16 amend School Board Policy H01.00 on November 12, 2008, constitutes a failure to have a
17 policy. Had the School Board voted to rescind its policy altogether rather than amend it,
18 Appellants would have a realistic argument.

19
20 The reality is that legislative bodies like the School Board are always free to amend
21 their own policies and procedures, so long as amendments do not remove necessary statutory
22 requirements. *See Palmason*, 80 Wash.2d at 452 ("But the right existed only because it was
23 given to them by the school authorities. Axiomatically, the authority which gives the right
24 may take it away."). School Board Policy H01.00 was amended to clarify its application to
25 closures for "instructional purposes" and to expand methods for notice. The first change
26 cannot be contrary to law, as "instructional purposes" is the very term set forth in RCW
27
28

1 28A.335.020. With respect to the notice provisions, before and after the November 12, 2008
2 amendment of School Board Policy H01.00, the District had a notice standard that exceeded
3 the minimum state requirements. Thus, no violation of RCW 28A.335.020 occurred by way
4 of the School Board amending its Policy to mirror the statute’s own language and list notice
5 options commensurate with current technology.
6

7 Appellants claim that the prior version of School Board Policy H01.00 really governed
8 the closure process ignores logical temporal order. The amendment occurred on November
9 12, 2008, **two weeks before** the issuance of preliminary recommendations on November 25,
10 2008 – the first step in the closure process - and **three months before** any vote was taken to
11 close a school on January 29, 2009. Additionally, the School Board acknowledged that the
12 closure process would only proceed **after** a vote was taken on the amendment, and **if** that vote
13 was in the affirmative. *TE at 140* (“If this new policy is approved, the timeline for the current
14 closure process is as follows ...). Thus, the District did have a policy in force prior to “any
15 school closure” as is required under RCW 28A.335.020, and that policy was School Board
16 H01.00, as amended on November 12, 2008.
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19 2. The School Board Policy Properly Addresses the Closure of School Buildings
20 for Instructional Purposes

21 Purpose of RCW 28A.335.020 is to provide a mechanism for community input when
22 a school district chooses to close a school building for instructional purposes, not for when a
23 school district chooses to make changes as to the programs within a building. This can be
24 determined from the plain wording of the statute, which speaks to “closure for instructional
25 purposes.” The Legislature could have written the school closure statute in a way that clearly
26 mandated its applicability to the repurposing of school buildings rather than just closures, but
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28

1 they did not. “If the statute’s meaning is plain on its face, then the court must give effect to
2 that plain meaning as an expression of the legislative intent.” *Dep’t of Ecology v. Campbell*
3 *& Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

4
5 Appellant has proposed no case law nor offers any reference to legislative history –
6 nor is the District aware of any – to support their claim that the statute on closing schools for
7 instructional purposes should extend to when school officials choose to alter the make up of
8 the educational programs within their school buildings. The legislative history of RCW
9 28A.335.020 is telling as to the intent of the application of law to the closing of physical
10 buildings rather than changing the composition of the program within the building. The
11 original 1983 House and Senate Bill Reports, which are attached here as Appendix A, identify
12 that the school closure statute relates to **facilities**, not programs. Both identify that the
13 question the legislature was considering related to facilities, and the environmental impact
14 that occurs when school districts choose to close school buildings for instructional purposes as
15 opposed to opening new facilities:
16
17

18 School districts are required under the State Environmental
19 Policy Act to prepare environmental impact statements (EIS)
20 before construction of new school **facilities**. However, the
21 current law is not clear on whether school district must prepare
22 an EIS before closing schools.

23 Apx. A at 1 (Senate Bill Report, Background); and 3 (House Bill Report explaining that the
24 statute was to serve as an alternative to SEPA when a district is closing a school).

25 Plainly put, if this statute were to be tied to programs rather than buildings, then there
26 would be no characterization of the statute as an alternative to measuring environmental
27 impact in its legislative history. Certainly it is beyond logic to read the use of “facilities” by
28 the legislature to mean the internal composition of a building, which can change on a yearly

1 basis dependant upon leadership and management choices, rather than the building itself.
2 Equally telling is that no case exists were a court has applied RCW 28A.335.020 to a
3 programmatic change; all existing cases relate to challenges of the physical closure of school
4 buildings. *See Sanders v. Seattle School Dist. No. 1*, 144 Wn.App. 1043 (2008); *In re Recall*
5 *Charges Against Seattle School Dist. No. 1 Directors*, 162 Wn.2d 501, 173 P.3d 265 (2007).
6

7 The history of the Seattle School Board Policy H01.00 is also instructive as to the
8 meaning of RCW 28A.335.020. As indicated above, School Board Policy H01.00 was
9 amended in 1997 to remove its application to the temporary relocation of students and staff
10 during periods of school building reconstruction or renovation. If RCW 28A.335.020
11 applied to schools as educational programs rather than school buildings, such an amendment
12 would not have been necessary, because a “school” would never close during such
13 circumstances, it would only move. Given the deference owed to the School Board, and
14 considering the plain language of the statute, its history, and case law, Appellants’
15 interpretation cannot stand.
16
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18 B. The School Board properly followed its Policy and RCW 28A.335.020

19 1. Appellants Had Notice and Opportunity to be Heard

20 RCW 28A.335.020 requires that “the school board of directors shall conduct hearings
21 to receive testimony from the public on any issues related to the closure of any school for
22 instructional purposes.” The District held hearings related to all five schools proposed to be
23 closed for instructional purposes. *TR at 1376-1747, 2048-2114.*
24

25 Appellants brief is rife with claims that because the Genesee Hill building, rather than
26 Cooper Elementary School, was treated as the closure of a school for instructional purposes,
27 those affiliated with Cooper did not receive proper notice and opportunity to be heard. The
28

1 argument of course ignores that Cooper will continue to be used for instructional purposes.
2 Even assuming the Appellants interpretation of RCW 28A.335.020 and School Board Policy
3 H.01.00 to be correct rather than the School Board's (which would be contrary to the
4 proposition set out by the Supreme Court of Washington in the *Central Puget Sound Growth*
5 *Management Hearings Board*, 142 Wash.2d at 553 (2000)), Appellants argument still fails as
6 it ignores that they were actually afforded significant opportunity and notice to be heard.
7

8 Appellants' case was brought in their individual capacities. Appellants are **not**
9 representing a class. They **cannot** assert the hypothetical claims of others. They must
10 instead establish that they personally did not have notice or opportunity to be heard.
11 Appellants cannot make such a claim. They, along with all District families, received
12 information on how to provide input. *TE at 1215-18, 1335-39, 1939-42, 2035-47. All three*
13 **Appellants actually attended and provided testimony at a public hearing.** *Id. at 1666-*
14 *68; 1647-49; 1677-79.* By their attendance and provision of testimony asking that the
15 Pathfinder program not be relocated to the Cooper building, Appellants knew that they could
16 speak to their concerns about the options being considered before the School Board at a
17 public hearing. Appellants also had the opportunity to share their views with Director
18 Sundquist and two of his colleagues at a meeting held at Cooper on January 13, 2009. *Id. at*
19 *1157, 1756.* Thus, any person interested in commenting on the proposed repurposing of the
20 Cooper building to house the Pathfinder program had two-site specific opportunities to be
21 heard by the School Board. It is undisputed that all three Appellants actually did take
22 advantage of at least one of these opportunities to be heard.
23

24 Appellants could also, and in the case of Appellant Williams **did**, provide testimony
25 at the School Board's January 7, and January 21, 2009 meetings, or at the general public
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1 hearing on January 22, 2009 to express their disagreement with repurposing the Cooper
2 building to house the Pathfinder program. *TE at 2014, 2162, 2164.* Additionally, like the
3 hundreds of other community members, they could have attended the December 4 and 6,
4 2008 public workshops to provide feedback. As evidenced by the record, a discussion of the
5 repurposing of the Cooper building to house the Pathfinder program was held at both
6 workshops. *Id. at 1264-70.* Appellants also had the opportunity to submit their views related
7 to the proposed closure of the Genesee Hill building and the repurposing of the Cooper
8 building to house the Pathfinder program in writing throughout the months of discussion, as
9 many others did. *Id. 2241, 2249-50, 2252-53.*

12 Simply put, these three Appellants had ample notice and opportunity to be heard
13 regarding the proposal to repurpose the Cooper building to house the Pathfinder program,
14 and were actually heard. It is not required under law or policy that the School Board agree
15 with all public input, nor could the School Board do such a thing given the variety of
16 viewpoints expressed. The School Board was free to make the decisions it believed best
17 advanced the interests of the District as a whole, and the School Board properly exercised
18 this authority having considered the input of thousands of citizens, including these three
19 Appellants.
20

22 2. The Superintendent Prepared Exhaustive Written Summaries Containing an
23 Analysis of the Impact of all of the Capacity Management Recommendations

24 The requirement contained in RCW 28A.335.020 is worded as follows: “The policy
25 adopted shall include provisions for the development of a written summary containing an
26 analysis as to the effects of the proposed school closure.” As previously noted, School Board
27 Policy H01.00 provides for preparation of the requisite written summary. It is undisputed that
28

1 the Superintendent did prepare the required summary – both in the form of Preliminary
2 Recommendations and Final Recommendations. *TE at 151-296; 1750-1938.* Both had
3 detailed analysis of both the impacts of actual school closures and recommended
4 programmatic changes, even though the latter is not required under policy or law.
5

6 If there had been no recommendation report, or if the report had been completely
7 devoid of any discussion of closures and their possible effects, Appellants might have some
8 room for argument on this point. However, Superintendent Goodloe-Johnson’s two
9 recommendation reports are replete with discussion of the possible effects of the
10 recommended school closures and programmatic changes, including discussions of the effects
11 of closing the Genesee Hill building for instructional purposes and the repurposing of the
12 Cooper building to house the Pathfinder program. *TE at 190-92* (Cooper-specific discussions
13 in the Preliminary Recommendations), *1770-73, 1799-1800, 1803-06, 1863, 1918* (Cooper-
14 specific discussions in the Final Recommendations). The Demographics and Integration data
15 regarding Cooper that Appellants claim is missing from the written analysis of the impact of
16 the proposed school closures is located in Appendix H of the Final Recommendations. *Id. at*
17 *1863.* It is thus clear that what the Court is faced with is a simple disagreement with the
18 Superintendent’s summary and recommendations. Again, disagreement is not a basis for a
19 successful challenge to a school board’s exercise of its discretionary decision making power.
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23 *Palmason* 80 Wn.2d at 452-53; *Lukens*, 147 Wn. at 474

24 3. There is No Legal Right for Any Child to Attend Any Specific School

25 Underlying Appellants brief appears to be a claim that because their children are
26 currently attending Cooper Elementary, they have a right for their children to continue to
27 attend there, and for the academic program within the school to remain exactly as it is. There
28

1 is no case with which the District is familiar – and there is no case cited by Appellants – to
2 support this claim. In fact, a leading decision by the Supreme Court of Washington holds
3 precisely to the contrary: “**We find no authority in law for the proposition that parents**
4 **have a vested right to send their children to, or that children have a vested right to**
5 **attend, any particular public school.”** *Palmason*, 80 Wash.2d at 453 (emphasis added).
6 The U.S. Supreme Court endorsed the *Palmason* conclusion in *Washington v. Seattle School*
7 *Dist. No. 1*, 58 U.S. 457, 479, n.22, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982). Additionally,
8 what the academic program within a particular school building looks like, is a matter solely
9 left to the determination of local school districts and officials. As a practical matter,
10 Appellants ignore that the District does not have a neighborhood school assignment plan at
11 this time, thus there is no guarantee that any student will attend any particular school. They
12 also ignore that children can continue to attend school in the Cooper building, by seeking
13 enrollment in the Pathfinder program. The School Board specifically passed an amended that
14 would allow for the children who presently live in the area the guaranteed ability to continue
15 attending school in the Cooper building. *TE at 2271-72, 2277-78.*

19 C. The School Board’s Decisions Related to the Effective and Efficient use of the
20 District’s Buildings Were Not Arbitrary or Capricious

21 The District went far beyond what was required of it under law or policy to ensure that
22 the School Board was well informed and that citizens had an opportunity to meaningfully
23 participate in discussions regarding the effective and efficient use of the District’s buildings:

- 24 • The feasibility and effects of building closures and programmatic
25 changes were considered at open public School Board Meetings and
26 Workshops for months. *TE at 1154-1159, 2319-2324.*
- 27 • Thousands of pages of data regarding facilities, academic programs,
28 capacity, and demographics were considered, including multiple

1 reviews and audits by outside experts. *TE at 151-296, 304-1153;*
2 *1255-63, 1750-1938, 2016-2034, 2256-57.*

- 3 • In addition to the two lengthy reports issued by the Superintendent,
4 the Superintendent and her staff provided multiple updates at Board
5 Meetings and Workshops in order to keep both the School Board
6 and the Public aware of different options that were being explored.
7 *TE at 151-296, 1750-1938, 1160-1214, 1222-50, 1271-1334, 1345-*
8 *72, 1946-68, 1978-2013, 2128-61.*
- 9 • District held over two dozen meetings and hearings related to
10 closure - well beyond what was called for by law and policy - and
11 advertised those meetings extensively. *TE at 1154-59, 1376-1747,*
12 *1749, 2048-2114, 2165-2240, 2279-2318.*
- 13 • Summaries of the Preliminary and Final Recommendations, along
14 with Summaries of every option considered prior to the School
15 Board decisions, were posted online and sent to families with
16 information regarding opportunities to be heard at meetings or
17 submit written commentary. *TE at 1215-18, 1335-39, 1939-42,*
18 *2035-47.*
- 19 • The District maintained a website dedicated to Capacity
20 Management (<http://www.seattleschools.org/area/capacity/index.dxml>), posting
21 all related materials online, as well as creating and updating a
22 “Frequently Asked Questions” document. *TE at 2035-47.*

23 The efforts by the District to obtain community input were incredibly successful.
24 Hundreds of citizens attended community workshops to voice their opinions on the
25 Preliminary Recommendations. *TE at 1264-70, 1756.* Hundreds of citizens attended School
26 Board meetings and public hearings to give testimony after the issuance of the
27 Superintendent’s Preliminary and Final Recommendations and before the January 29, 2009
28 School Board meeting. *Id. at 1252, 1373, 2014, 2162, 2164.* Additionally, hundreds of emails
were reviewed and considered, and both the emails themselves and summaries of all feedback
reviewed were made available for public review. *Id. at 1756, 2241-45.*

1 Ultimately, the School Board – the elected officials charged with making policy
2 determinations for the District - decided to close five schools and make nine programmatic
3 changes as the culmination of years of public debate regarding the resource drain caused by
4 significant excess capacity in the District. *TE at 2277-78.* There was nothing about these
5 decisions that was arbitrary or capricious, rather they were thoughtful decisions involving
6 thousands of hours of work by the School Board, the Superintendent, and District staff. These
7 decisions were difficult, but were ones that needed to be made, particularly in light of the
8 bleak fiscal picture the District faces.
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V. CONCLUSION

The District respectfully submits, for the reasons set forth above and in the accompanying supportive declaration, that Appellants' Motion for Summary Judgment should be denied. Further, as Appellants cannot establish that the School Board's January 29, 2009 decisions related to the effective and efficient use of the District's buildings were arbitrary, capricious, or contrary to law, Court should uphold the School Board's decision and issue a judgment in the District's favor.

RESPECTFULLY SUBMITTED this 1st day of June, 2009.

Gary Ikeda, WSBA #7079
Shannon M. McMinimee, WSBA #34471
General Counsel's Office
Seattle School District No. 1

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 1, 2009, I caused the foregoing OPPOSITION TO
3 MOTION FOR SUMMARY JUDGEMENT to be filed with the Clerk of the Court for the
4 King County Superior Court, and to be hand delivered to:
5

6 J. Richard Abramburu
7 720 Third Ave. Ste. 2112
8 Seattle, WA 98104
(Counsel for Appellants)

9 Dated this 1st day of June, 2009, in Seattle, Washington.

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12 _____
Amy Carter
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