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IN THE SUPERIOR COURT, STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

IN RE THE MATTER OF RECALL)
CHARGES AGAINST SEATTLE)
SCHOOL BOARD DIRECTORS LIZA)
RANKIN, LISA RIVERA-SMITH,)
CHANDRA HAMPSON, ZACHARY)
DeWOLF, LESLIE HARRIS AND)
BRANDON HERSEY)

No. 21-2-04421-9 SEA

ORDER DISMISSING PETITION
FOR RECALL CHARGES AND
BALLOT SYNOPSIS

This matter came before the Court upon the King County Prosecuting Attorney's (KCPAO) petition to determine (1) the sufficiency of recall charges filed by Emily Cherkin, Jennifer Crow, and Beverly Goodman (Petitioners), against Seattle School Board Directors, Liza Rankin, Lisa Rivera-Smith, Chandra Hampson, Zachary DeWolf, Leslie Harris and Brandon Hersey (Board), and (2) the adequacy of the ballot synopsis formulated by the KCPAO from the charges.

The Court held a hearing via Zoom on April 16, 2021. In addition to oral argument the Court considered the following:

- 1. The petitions setting forth the charges in support of recall (collectively, the

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“Petition”);

2. The King County Prosecuting Attorney’s Brief Regarding Recall Process;
3. The Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis;
4. Petitioners’ Memorandum in Support of the Recall Charges;
5. The Declarations of Chris Jackins, Emily Cherkin, Jennifer Crow, and Beverly Goodman in Support of the Recall Charges and exhibits attached thereto;
6. The Brief in Opposition to the Recall Petition; and
7. The Declarations of Seattle Public Schools No. 1 Board Directors Liza Rankin, Lisa Rivera-Smith, Chandra N. Hampson, Zachary DeWolf, Leslie S. Harris and Brandon K. Hersey, the Declaration of Gregory C. Narver, and the Declaration of Richard Best in Support of the Opposition to the Recall Petition and exhibits attached thereto.

On March 22, 2021, the Petitioners filed a statement of charges with the King County Elections Department seeking the recall of the Board. Pursuant to RCW 29A.56.130(1)(b), the KCPAO formulated the ballot synopses based on the statement of charges filed against the Board. The ballot synopses, which are identical for each director, read as follows:

- (1) Failed to adequately oversee timely provision of in-person education during the pandemic compared to other districts;
- (2) Approved a property exchange with Seattle Parks Department for the West Seattle Elementary addition project without proper environmental review;

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- (3) Failed to correct a 2015 Board of Directors action accepting a \$2.7 million athletic grant that allowed the voter to remain confidential;
- (4) Approved one construction project without adequate environmental review and other construction contracts involving an individual and firm with an apparent conflict of interest;
- (5) Approved contracts and allowed services in violation of RCW 28A.604.040(1) security and student privacy requirements;
- (6) Failed to consult Duwamish Tribe before voting on two projects;
- (7) Approved outdoor play area design for one school that was smaller than the minimum size required;
- (8) Approved the renaming of one school without the consent of the honoree’s family and contrary to another agreement;
- (9) Approved the sale of easement rights to a property without a public hearing in violation of RCW 28A.335.120;
- (10) Approved an agreement with a private company to provide new curriculum for one school in violation of RCW 28A.320.230; and
- (11) Approved changes to an attendance area boundary that were contrary to Board policy.

Washington voters have a constitutional right to recall any nonjudicial elected official who “has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his [or her] oath of office.” Const. art. I, § 33. The statutes governing recall proceedings are at RCW 29A.56.110-.270. See Const. art. I, § 34.

In the recall process, the court's role is “to ensure that the recall process is not used to harass public officials by subjecting them to frivolous or unsubstantiated

1 charges.” In re Recall of West, 155 Wn.2d 659, 662, 121 P.3d 1190 (2005). It is up to
2 the voters to determine whether the charges are true and, if so, whether they in fact justify
3 recalling the official. Courts therefore take all factual allegations as true. In re Recall of
4 Boldt, 187 Wn.2d 542, 549, 386 P.3d 1104 (2017).

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6 A charge is factually sufficient where the alleged facts, taken as a whole,
7 “identify to the electors and to the official being recalled acts or failure to act which
8 without justification would constitute a prima facie showing of misfeasance, malfeasance,
9 or a violation of the oath of office.’ ” Id. at 548, 386 P.3d 1104 (quoting Chandler v. Otto,
10 103 Wn.2d 268, 274, 693 P.2d 71 (1984)). A charge “is legally sufficient if it ‘state[s]
11 with specificity substantial conduct clearly amounting to misfeasance, malfeasance or
12 violation of the oath of office.’ ” Id. “Misfeasance,” “malfeasance,” and “violation of the
13 oath of office” are statutorily defined:

- 14
15 (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct
16 that affects, interrupts, or interferes with the performance of official duty;
17 (a) Additionally, “misfeasance” in office means the performance of a duty
18 in an improper manner; and
19 (b) Additionally, “malfeasance” in office means the commission of an
unlawful act;
20 (2) “Violation of the oath of office” means the neglect or knowing failure
by an elective public officer to perform faithfully a duty imposed by law.

21 RCW 29A.56.110.

22 There are limitations on recall, one limitation being that “an official may be
23 recalled for execution of discretionary acts only if the execution of that discretion is done
24 ‘in a manifestly unreasonable manner,’” which “may be shown by demonstrating

1 discretion was exercised for untenable grounds or for untenable reasons.” Matter of
2 Recall of Durkan, 196 Wn.2d 652, 664, 476 P.3d 1042, 1048–49 (2020); In re Recall of
3 Inslee, 194 Wn.2d 563, 572, 451 P.3d 305 (2019).

4 Charge 1 pertains to the Board delaying in-person educational opportunities to
5 students during the COVID-19 pandemic compared to other school districts. The
6 Petitioners allege in the charge that the Board has explicitly acknowledged that the results
7 of remote learning being employed by the district are unacceptable, and that certain
8 populations of children need services and not a computer. The Petitioners rely on a
9 number of news articles addressing the harm remote learning has inflicted on children, as
10 well as the fact that Seattle was one of the first to suspend in-person learning and one of
11 the last to return to the classroom. This Court may draw reasonable inferences from facts.
12 Courts have found news articles to be sufficient. See, In re Recall of West, 155 Wn. 2d
13 at 666. This Court finds charge 1 to be factually sufficient.

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16 The decision to close schools is a discretionary act and members of a school board
17 cannot be recalled unless they arbitrarily or unreasonably exercised such discretion. Cole
18 v. Webster, 103 Wn.2d 280, 284–85, 692 P.2d 799, 802–03 (1984).¹ A clear abuse of
19 discretion may be shown by demonstrating the discretion was exercised in a manner
20 which was manifestly unreasonable or exercised on untenable grounds or for untenable
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¹ The petition does not allege the board closed the school, rather it alleges the school did not provide timely
24 in-person education.

1 reasons. Wilson v. Board of Governors, 90 Wn.2d 649, 656, 585 P.2d 136 (1978), cert.
2 denied, 440 U.S. 960, 99 S.Ct. 1503, 59 L.Ed.2d 774 (1979). The two Resolutions
3 included in the petition from August and December 2020, demonstrate the Board did not
4 exercise its discretion in a manner which was arbitrary, unreasonable or untenable. This
5 Court finds charge 1 to be legally insufficient.
6

7 Charge 2 alleges the Board approved a property exchange with Seattle Parks
8 Department for the West Seattle Elementary School addition project without proper
9 environmental review. The Petitioners allege the Board should have acted to remedy a
10 prior improper State Environmental Policy Act (SEPA) review process rather than voting
11 on February 10, 2021, to approve the property exchange. The record shows the vote that
12 took place with respect to this issue, Resolution No. 2020/21-14, was not a vote to
13 approve a property exchange with Seattle Parks Department. Instead the Board voted to
14 declare the relevant portion of land to be surplus property, and to begin the process for
15 future sale. Such process starts with a public hearing. The West Seattle Elementary
16 School property exchange hearing is scheduled for April 20, 2021. The Court finds this
17 charge to be factually and legally insufficient.
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19 Charge 3 alleges the Board failed to correct a 2015 Board of Directors action
20 accepting a \$2.7 million athletic grant that allowed the donor to remain confidential. The
21 Petitioners allege that by allowing the donor to remain anonymous there is no means of
22 knowing if there is a potential conflict of interest. Recall petitions are limited to actions
23 taken while in office. See Const. art. I, § 33 (allowing recall petitions based on charges
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1 “that such officer has committed some act or acts of malfeasance or misfeasance *while in*
2 *office*, or who has violated *his oath of office* ” (emphasis added)). In re Recall of Bolt,
3 177 Wn.2d 168, 179, 298 P.3d 710, 717 (2013). None of the six Directors subject to this
4 petition were on the Board in 2015, and there are no facts to suggest they were in any
5 way involved in the 2015 action. The Court finds this charge is both factually and legally
6 insufficient.
7

8 Charge 4 alleges the Board mishandled several issues regarding Rainier Beach
9 High School. 1) That the Board approved a construction project to replace Rainier Beach
10 High School without the proper environmental review; and 2) that the Board voted to
11 approve contracts that appear to involve conflicts of interest. As to the first issue, the
12 record shows that in June of 2018, the District prepared an Environmental Impact
13 Statement (EIS) for potential environmental impacts that could result from the
14 implementation of known projects proposed for the Building Excellence Five (BEX V)
15 Levy Program. It further shows that any future projects would be subject to
16 environmental reviews for each specific project. Thus, any projects to replace Rainier
17 Beach High School are not subject to the prior EIS. Moreover, SEPA allows the
18 developing of plans or designs without first obtaining an environmental impact statement.
19 WAC 197-11-070(4).
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22 As to the second issue, the Petitioners allege Landmarks Board Chair, Jordan Kiel,
23 who also works for Bassetti Architects, has a conflict of interest when voting on issues of
24 whether the school building should be preserved as a landmark. The conflict arises
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1 because Kiel's firm has the contract to tear down and rebuild the school. Kiel recused
2 himself from voting on the preservation of Rainier Beach High School, but participated
3 in discussions about the Northgate Elementary School project. The petition lacks factual
4 specificity as to any conflict of interest between the Board and Bassetti Architects.
5 Moreover, the petition does not allege that the Board intended to violate any law in
6 awarding the design contract or other construction contracts referenced in the charge. The
7 Court finds this charge to be factually and legally insufficient in its entirety.
8

9 Charge 5 alleges the Board disregarded issues relating to student data privacy
10 protection. The Petitioners allege the Board violated RCW 28A.604.040(1) because
11 "they" do not maintain a comprehensive information security program. The charge
12 includes an allegation that students were told "everything you do or say on Schoology or
13 Teams meetings is public record with your name associated with it." However, the charge
14 lacks facts to indicate the Board does not maintain a comprehensive information security
15 program designed to protect the privacy of students, nor does it allege that any
16 confidential student information has been disclosed. The record shows the contract with
17 Schoology includes a provision requiring compliance with federal privacy laws and
18 prohibiting the disclosure of confidential student information. The Court finds this charge
19 is both factually and legally insufficient.
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22 Charge 6 pertains to the Board violating its own policy in support of treaty rights
23 and benefits for the Duwamish Tribe. The Petitioners allege the Board failed to consult
24 the Duwamish Tribe before voting on two projects: 1) approval designating March 9th as
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1 “Billy Frank, Jr: Salmon Celebration Day”; and 2) failing to consult with the Duwamish
2 Tribe in its assessment of impacts to cultural resources for a Northgate Elementary School
3 Replacement Project. Resolution 2016/17-1 resolves that the people of the Duwamish
4 Nation deserve any treaty rights and benefits. The resolution does not create a
5 requirement for the Board to consult the Duwamish Nation about Board decisions.
6 Additionally, there are no specific facts alleging the Board knew the consultant failed to
7 invite the Duwamish Tribe when it was conducting the environmental study. An elected
8 official is not subject to recall “for the act of a subordinate done without the official’s
9 knowledge or direction.” See, In re Recall of Morrisette, 110 Wn.2d 933, 936, 756 P.2d
10 1318 (1988). Nor are there any facts establishing the consultant intentionally excluded
11 the Duwamish Tribe at the request of the Board. This Court finds this charge is factually
12 and legally insufficient.
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15 Charge 7 alleges the Board approved detrimental shrinking of the size of play
16 areas. The petition alleges the size of Viewlands Elementary outdoor play space is .96
17 acres when the school standards are approximately 1 acre. The charge does not identify
18 any applicable law nor do the facts amount to prima facie showing of wrongful conduct
19 by the Board. The Court finds this charge to be factually and legally insufficient.
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21 Charge 8 pertains to renaming Northgate Elementary School. The Petitioners
22 allege the Board approved the renaming of the school without the consent of the honoree’s
23 family and contrary to another agreement with a different family for a different school.
24 The charge does not set forth any standard, law, or rule that was allegedly violated in the
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1 course of the Board’s decision to rename Northgate Elementary School to James Baldwin
2 Elementary School. The record shows a family member reached out to the Board via e-
3 mail and stated: “We have received similar requests in the past and have respectfully
4 declined. However, if the organization chooses to move forward with use of the name
5 ‘James Baldwin’ it’s [sic] may not do so using his image or likeness to promote the new
6 school.” The Board’s decision to rename the school is inherently discretionary and the
7 charge does not set forth sufficient facts to show the Board abused or exercised their
8 discretion unreasonably, especially in light of the e-mail. The Court finds this charge to
9 be factually and legally insufficient.
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11 Charge 9 alleges the Board voted to sell school property without holding a public
12 hearing. The charge does not set forth any standard, law, or rule that the Board allegedly
13 violated. Moreover, the requirements under RCW 28A.335.120 of notice and to conduct
14 a public hearing are not applicable here because this is not a full transfer of the property
15 but rather an easement agreement. The Court finds this charge to be factually and legally
16 insufficient.
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18 Charge 10 pertains to residence-based discrimination and curriculum adoption.
19 The Board’s decision to approve the Joint Operating Agreement with the Technology
20 Access Foundation (“TAF”) to provide STEM education to students at Washington
21 Middle School, including students designated as Highly Capable, is inherently
22 discretionary and the charge does not set forth sufficient facts to show the Board abused
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1 or exercised their discretion unreasonably. The Court finds this charge to be factually
2 and legally insufficient.

3 Charge 11 alleges the Board violated the rights of Kimball Elementary School
4 families by changing the attendance area into Washington Middle School because the
5 latter is run by a private company. Washington Middle School is a public school. The
6 Board's approval of attendance area boundary changes is inherently discretionary.
7 Merritt Sch. Dist. No. 50 v. Kimm, 22 Wn.2d 887, 891, 157 P.2d 989, 991 (1945). The
8 charge does not set forth sufficient facts to show the Board abused or exercised their
9 discretion unreasonably. The Court finds this charge to be factually and legally
10 insufficient.
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12 The Court is understanding and sympathetic of the parents' concerns with children
13 in the Seattle Public School District being subjected to remote learning, and the
14 continuous delays in returning the children to in-person learning when other schools were
15 proactive in finding solutions for children to return to class. The Court recognizes the
16 harm this has caused the children, and notes the Board itself recognizes the problems by
17 acknowledging that online learning environments in no way can be compared to what
18 children get when they spend time with each other in physical space, as well as
19 acknowledging that certain populations of children need more than a computer.
20 However, the Court is limited in its role as a gatekeeper, and is bound by the legal
21 principles it must follow as outlined above.
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24 NOW, THEREFORE, the Court hereby ORDERS as follows: the Petitions for
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26 ORDER -- 11

Honorable Mafé Rajul
Department 35
King County Superior Court
516 Third Avenue, E713
Seattle, Washington 98104
(206)477-1537

1 Recall against Directors Liza Rankin, Lisa Rivera-Smith, Chandra N. Hampson, Zachary
2 DeWolf, Leslie S. Harris, and Brandon K. Hersey are hereby DISMISSED with prejudice
3 and the Court orders that the Charges and Recall Ballot Synopsis not be submitted to
4 Washington voters.

5 SO ORDERED this 19th day of April, 2021.



7 Honorable Mafé Rajul
8 King County Superior Court Judge