IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

MATT PEÑA, JULIAN BEATTIE, MARISSA SMITH, and MAURICE KING, Appellants, vs. OLYMPIA SCHOOL DISTRICT and OLYMPIA SCHOOL DISTRICT BOARD OF DIRECTORS, Respondents.	No. 24-2-00128-34

REPORT OF PROCEEDINGS

March 8, 2024

SUMMARY JUDGMENT HEARING

BE IT REMEMBERED that on March 8, 2024, the above-entitled matter came on for hearing before the HONORABLE ANNE EGELER, judge of Thurston County Superior Court.

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I N D E X

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*** March 8, 2024 ***

THE COURT: All right. I would like to hear Peña vs. Olympia School District. Counsel, I will allow argument of ten minutes a side. Because these are cross-motions for summary judgment, you will both have an opportunity for rebuttal as well. So you can reserve time as you see fit. Because the appellants filed their motion first, they will argue first. And I ask that everyone speak slowly so that we can make sure we get a good record. You may begin.

MR. BEATTIE: Okay. May it please the Court.

My name is Julian Beattie, and I am here before the Court this morning as a parent. I have a son who is a first grader at Margaret McKenny Elementary School. And my co-appellants seated here also have young children who attend either Margaret McKenny Elementary School or Madison Elementary School which are public neighborhood schools in southeast Olympia.

The four of us who filed this appeal have experienced significant levels of unnecessary stress, fear, and grief due to the arbitrary way in which the Olympia School District and it's Board of Directors have targeted our schools for permanent closure. Our young families are just beginning to stabilize after the disruptions caused by the pandemic and a disorderly, chaotic, and irrational school

closure process is the last thing we need. Unfortunately, that school closure process continues to play out as we speak. But the good news is that the Court can provide accountability by halting the closure process and requiring the School Board to follow the law. If the Board --

THE COURT: Mr. Beattie, let me stop you there. What's been asked of the Court, my understanding is, is that it examine whether the December 14th decision to open a 90-day comment period was a decision that was arbitrary and capricious in violation of the law. But I just want to make clear you are not asking the Court to stop the closure of the schools. We have, rather, a procedural issue that's before the Court right now, correct?

MR. BEATTIE: Yes, Your Honor. And I certainly want the Court to feel comfortable with the relief we are asking for. We are asking for the Court to invalidate the Board's December 14th vote. The consequence of doing so will be to halt this current school closure process. I want to be candid. The Board can still restart the process and can still close our schools, but it has to do so following the correct orderly procedure that's set out by state law and Board Policy 6883 which state that the Board must produce a seven-factor written analysis of the proposed closures before it considers the closure of any school, and that did not happen in this case.

THE COURT: Let me stop you there as well.

I understand your argument that that did not happen on December 14th of 2023 at the time the comment period was opened. As I understand it, the issue of whether that written decision occurred in January of 2024 is not before the Court today; is that correct?

MR. BEATTIE: Let's talk about the significance of the updated analysis that the Board developed in January.

First, as we pointed out in our brief, that's a tacit admission that the written analysis did not exist at the time of the vote. And when you vote first and then analyze, that is an arbitrary and capricious sequence and there has to be a consequence for that.

So I think that the question is did the Board somehow restart the process when it released the updated analysis. No, it did not. Factually, the Board has not restarted the process. We are still in the original school closure process that was authorized by the Board's December 14th vote. The idea that the process has somehow restarted is a claim that you will only hear from the Board's lawyers. The Board members themselves have never made that claim publicly at any public meeting and the Board has never formally rescinded the December 14th vote. So if they are here today taking the position that somehow the process restarted, that in and of itself is an arbitrary and

capricious sequence because that would mean we would actually have two concurrent closure processes happening now which is obviously an untenable and arbitrary situation.

I want to make the Court comfortable again with the relief we're requesting. We're here on summary judgment. And the way that you can rule for us is by understanding that there is no genuine dispute that the Board lacked a written analysis that complied with Policy 6883 at the time it voted. At the time it voted on December 14th, the only document that the Board had available to it as its written analysis was literally a PowerPoint slide deck that was produced by the Board's consultant. That PowerPoint slide deck analyzed numerous closure scenarios other than the one that the Board ultimately adopted when it abruptly shifted its focus to our two schools, Madison and McKenny.

And yes, Your Honor, if you read through that document you will hear passing references to our two schools. But even if you are to read those threadbare sentences in the light most favorable to the District, there is still no getting around one fundamental flaw that we pointed out in our brief which is that that PowerPoint slide deck completely fails to address at least two of the seven factors in Policy 6883. So even if you read it in the most charitable light to the District, there is no way that the

Court can conclude that it is a seven-factor analysis that is required to kick off this closure process. And the Board knows this. That's why they scrambled to update the analysis after the vote, after we brought this litigation. And because there is such a patent flaw with the December 14th vote, a lot of the arguments that the District is now bringing to this case are attempts to distance themselves from that vote.

Your Honor, you alluded to one of those which is that they perhaps restarted the process and I refuted that. Factually they did not. Another argument that we are now hearing is that perhaps the Board wasn't legally required to vote and so it can't be held accountable for the consequences of that vote. And I would like to refute that argument too.

The correct analysis is that on December 14th the Board made a formal decision to target two schools for closure and to move to a public comment phase of the school closure process. The question before the Court is was that decision arbitrary and capricious. Yes, it was because the Board did not have in its possession a written analysis that met the requirements of Policy 6883. The consequence is to invalidate the vote which will then have the consequence of halting the current closure process.

Another argument that we are hearing in the briefing is

that the Board and the District should get some sort of credit for holding public hearings. These are public hearings that were held last week. So another question the Court may be wondering is what's the significance of the fact that the Board held public hearings? No legal significance. There is no legal significance to the fact that the Board held those hearings. And let me explain why.

THE COURT: Before you do, I will give you a heads up that you are down to two minutes if would like to reserve time.

MR. BEATTIE: Thank you.

Those public hearings were scheduled based on the December 14th vote. If the December 14th vote was invalid, then so were the public hearings. They are not something that the Board can legally benefit from. If you do not start the process correctly, you cannot continue with the process.

And as a brief analogy I would offer to the Court, it's like in a criminal case where if you try to introduce evidence based on a search warrant that's later invalidated, that evidence is suppressed. These public hearings are like that, they are fruit of the poisonous tree. You cannot continue a process that was never validly started.

And for those reasons, we would ask you to grant our summary judgment motion, halt the arbitrary process, and I would like to reserve the rest of my time for rebuttal.

THE COURT: Very good. You have one minute remaining.

MR. EBERHARDT: May it please the Court. I'm Charles Eberhardt representing the School District.

First I would just like to briefly reconfirm what is not before the Court. What's not before the Court is whether it's necessary or appropriate for the School District to close any schools or the Board's authority to make any such decision.

School closure decisions are difficult. They're emotional. This particular one has been very difficult and emotional for much of the community and the School Board. But the School Board is proceeding in a very conscientious manner in order to ensure maximum potential of public participation.

This is a straightforward case.

THE COURT: Mr. Eberhardt, I have a question for you about --

MR. EBERHARDT: Certainly.

THE COURT: -- public participation.

Your argument regarding the Policy 6883 is that it does not specifically require a 90-day comment period, rather it

requires that hearings be held and a decision made within 90 days, which would infer that that decision can be made in less than 90 days, perhaps with the hearings being held over a six-week period and then the decision being made by the Board. Did I correctly understand your argument?

MR. EBERHARDT: I think that is correct. If you look at both the statute and the policy, both make reference to 90 days. They make reference to 90 days in both cases as a maximum period of time during which period certain things must happen. Under the statute, the requirement is that within the 90-day period before a final decision, the School District has to have hearings. The policy says that during a 90-day period following the draft analysis they should have the hearings. So in both cases the reference point is when did the hearings occur.

THE COURT: So even if the District says that it's open to holding a period open for 90 days, it has authority under your argument to make the decision sooner if it completes the hearings as required?

MR. EBERHARDT: In this case, the Board committed that it would not make a decision.

THE COURT: Understood. But is your argument that they have the authority to change that decision as long as the hearings have been held and make a final decision sooner?

MR. EBERHARDT: Well, I think the place to start is this notion of opening the 90-day period. The Board did say we're going to open a 90-day period. That -- that step is not contemplated or required by the statute or the policy. So all the Board did was it said we're going to narrow the scope of what we think we should look at. It was presented in December with a whole lot of different options.

THE COURT: Understood. But you are also making an argument regarding mootness, and you are saying that a new period opened when there was a written analysis on January 24th of 2024 and that the Board has stated that it is willing to keep a comment period open from the date of that January written analysis through to April 25th.

So my question is, if the Board changes its mind, does it have -- not will it -- but is it your argument that the Board would have legal authority to shorten that period as long as the hearings were held as required by the policy?

MR. EBERHARDT: I think that the only way you can know for sure if the Board has complied with the policy and the statute is if it decides to close the school, then you look back from that and determine whether the time periods which were required by the policy and the statute were met. So yes, a decision could be made to close the school under the -- consistent with both the policy and the statute

before April 25th.

Is that the question?

THE COURT: That was the question. Thank you.

MR. EBERHARDT: So the simplest way to address this case is to conclude that this appeal is premature. It's not ripe because there has been no school closure decision. Both the policy and statute can only be measured by a reference to whether they've been complied with in the event there is a school closure decision. That hasn't happened.

The legal authority around that focuses on the fact that even through the statute refers to the right to appeal a Board action, the case law makes it clear it has to be a final Board action, and the final Board action in this case, if it happens, would be a closure decision.

THE COURT: Well, it was a final decision to open the 90-day period, wasn't it? The president of the Board stated I'm making a motion to open a 90-day period for public comment. There was a vote taken. It was not a preliminary vote, was it?

MR. EBERHARDT: It was a -- there was a vote taken, but there was no decision to close schools, there's no --

THE COURT: No. That wasn't the motion. The motion was to open a 90-day comment period.

MR. EBERHARDT: And from the District's perspective,

there's no question that that's what was said, that was what the vote was. But that has no legal effect. That brings us to the point about --

THE COURT: They did not make a decision when they voted on that specific motion?

MR. EBERHARDT: That decision had no effect in terms of school closures.

THE COURT: Certainly. Agreed. But didn't it have an effect in terms of what was the subject of the motion and the vote to open a 90-day period for public comment?

MR. EBERHARDT: It -- it had the effect of narrowing the schools which we potentially considered for closure and committing the Board to not making any decision on school closures for 90 days. That was the effect of that vote.

THE COURT: And in fact, you said earlier that the District didn't have to offer a 90-day period for public comment. So they had made a final decision. A vote was taken to allow 90 days, correct?

MR. EBERHARDT: Correct, yes, --

THE COURT: All right.

MR. EBERHARDT: -- they did commit to that.

The.... I'm happy to address the mootness arguments. I think that the Court has already discussed those some with the counsel for -- for the appellants. My inclination is to focus on the merits, but I'd be interested to know

whether Your Honor would like to hear more about the merits or about any of the procedural arguments. Again, our position is the Court does not need to get to the merits, but I think the procedural arguments are quite straight forward and simple and the merits is potentially a little more complicated.

THE COURT: You have about three minutes left. You may reserve time or continue as you see fit.

MR. EBERHARDT: I will continue briefly.

On the merits, the focus has to be on the language of the statute and the language of the policy. And what the statute requires is a development of a written summary analyzing -- that the -- that the policy provide for the development of a written summary analyzing the effects of a closure, that the Board holds hearings [unintelligible] the school for the proposed closure and that those hearings -- in the event there is a school closure decision, that those hearings happen within 90 days --

(INTERRUPTION BY THE REPORTER.)

MR. EBERHARDT: That the hearings happen 90 days before that vote.

The policy adds two more requirements. It identifies specific factors. There are issues that should be considered in the analysis and it says that the hearing should be within 90 days after preparation of a draft of

that analysis. There's no real dispute that each of these requirements has been met.

In this case, plaintiffs -- or excuse me, appellants are presenting what's effectively a straw man. Their entire case is based on a vote and on the information before the Board related to a vote, that is not required by, contemplated by either the statute or the policy, it has no bearing or effect on the actual school closure process or, if there is one, school closure decision.

I'm not sure if I have any time left, but I'll reserve it. Thank you.

THE COURT: You have a moment left.

All right. Mr. Beattie, you have one minute.

MR. BEATTIE: Thank you.

Your Honor, I want to start off with ripeness. The School District is saying that there has to be an ultimate closure decision, i.e., one where the locks go on the doors. But there is no textual basis in the statute for that argument. The school closure statute says that we, any person, can appeal any decision, any person, any decision, and certainly we have a decision to open a 90-day comment period and to narrow the list of schools down to two.

Counsel also acknowledged that their entire response relies on the idea of the public hearings being a, quote,

unquote, reference point. But you don't get to the public hearings if you don't start the process correctly. You cannot continue and take advantage of things that happen that are in the midst of a process that was never lawfully started.

THE COURT: Thank you, Mr. Beattie.

MR. BEATTIE: Thank you.

MR. EBERHARDT: On that point, I'll take Your Honor back to the subpoena analogy we heard earlier. Subpoenas are required by law. And in this case, the initial December 14 vote was not required by law or by policy. So it is a poor analysis. Whatever happened in the December 14th vote has no bearing on the legality of what the Board has done moving forward. Thank you.

THE COURT: Thank you.

Thank you both. I want to note the quality of the briefing as well. Much appreciated. There was a thorough legal analysis here and the Court appreciates the quality of the work that you both have done.

I am prepared to rule.

I am going to start by noting that the appeal is ripe. This case involves a Board decision that has already occurred. According to a transcript of the December 14th, 2023, Board meeting, the Board president called for a vote to open a 90-day public comment period for closing Madison

and McKenny Elementary Schools. Three of the five Board members voted in favor of this. The Board president then declared the 90-day public comment period open. This was an appealable Board decision under RCW 28A.645.010.

Second, the appellants do have standing to bring this action. Under RCW 28A.645.010, an aggrieved person may appeal a school board decision. The appellants live in the school district and have children who attend Madison or McKenny Elementary Schools and, as such, they were aggrieved by the Board's decision to open the 90-day period for public comment without first providing a written analysis of the proposed closure of Madison and/or McKenny as required by Policy 6883. The injury at issue is the lack of notice and lack of a meaningful opportunity for citizen involvement before the School Board makes the final decision.

Summary judgment is appropriate as both parties have acknowledged because there are no issues of material fact. What is needed is strictly the answering of a question of law. And in that regard, the Court holds as follows: The Board's December 14, 2023, decision to open a 90-day public comment period for closing Madison and/or McKenny was arbitrary, capricious, and contrary to law. This action was taken pursuant to the District's published Policy 6883 which permits the Board to open a 90-day period following

the draft of a written analysis that considers seven enumerated issues regarding the proposed closure. During the 90-day period following the written analysis, the Board must hold hearings and receive comment before making the final determination of whether to close a school.

The policy was adopted pursuant to RCW 28A.335.020 which requires the School Board to have a policy that provides for, quote, citizen involvement, end quote, before a school board considers closure of a school. In violation of the policy, the December decision to begin the 90-day period was made in the absence of a written analysis of the proposed closure of Madison and/or McKenny Elementary Schools. The express statutory purpose of the policy is to provide for citizen involvement before a final decision is made regarding closure of a school. In the absence of a written analysis, the public cannot understand or evaluate the proposal or provide meaningful comment at the hearings. Because the December 14, 2023, vote did not comply with the policy or the statute under which it was enacted, it is invalid.

Now, I also want to address the District's contention that this case is moot. The District published a written analysis of the proposed closure of Madison and/or McKenny Elementary in January, January 24th of 2024, and indicated that it will not take any action on these options until

April 25th of 2024, 90 days after release of that written analysis. For two reasons this is not sufficient to render the case moot.

First, the Board has argued in its briefing and reiterated in oral argument that it is not legally obligated to allow 90 days for public comment. As such, its indication that it will allow public comment until April 25th is not a guarantee that that comment period will be available to the public. And second, the Board has not rescinded the December 14th, 2023, vote which specifically declared the opening of a 90-day comment period.

The parties may prepare a written order that conforms with today's oral ruling. If parties sign to indicate agreement with the form of the order, that may be submitted using the court's ex parte processes. One of the two, please, either a phone call to the Court's ex parte line any weekday between 8:30 and 9:00 a.m. after you've submitted that order in the record, or you may use the Clerk's Office to make that submission for a nominal fee. Otherwise, if you cannot agree on the form of the order -- and, of course, this is writing that's consistent with my oral ruling, not continued argument about what the order should be -- it will have to be noted for hearing on my Friday docket.

That concludes this matter for today. Thank you.

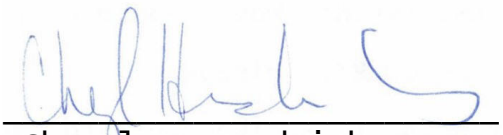
C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, CHERYL HENDRICKS, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

1. I reported the proceedings stenographically;
2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
4. I have no financial interest in the litigation.

Dated this 11th day of March, 2024.



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