

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

Emily Cherkin, Robert Femiano, Sally Soriano
Appellants,

NOTICE OF APPEAL OF SCHOOL DISTRICT
DECISION PURSUANT TO RCW 28A.645.010

v.

Seattle School District No. 1,
(a municipal corporation)

Respondent.

I. PARTIES

1. Emily Cherkin

(A) is a parent of a child enrolled as student in Seattle School District No. 1 who is affected by curriculum adoptions approved by the Seattle School Board; and/or

(B) is a taxpayer of the State of Washington and Seattle School District No. 1, including paying state taxes and local levy taxes used to purchase curriculum approved by the Seattle School Board.

2. Robert Femiano, Sally Soriano

(A) are taxpayers of the State of Washington and Seattle School District No. 1, including paying state taxes and local levy taxes used to purchase curriculum approved by the Seattle School Board.

As such, the Appellants will be harmed by three related decisions of the School Board on May 29, 2019 to approve action items #1, #2, and #3 of Section IX of the School Board agenda to approve and

purchase “instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)” at a cost of \$1,034,132 (action item #1) and to approve and purchase “instructional materials for all middle school science classrooms in grades 6-8” at a cost of \$1,503,829 for materials and \$565,857 for “in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist” (action item #2) and to approve and purchase “instructional materials for all elementary school science classrooms in grades K-5” at a cost of \$2,368,870 for materials and \$5,040,674 for “in-house professional development and collaboration” (action item #3) without the School Board having voted to approve the membership of the Instructional Materials Committee as required by RCW 28A.320.230.

3. Respondent SEATTLE SCHOOL DISTRICT NO.1 (“District”) is a municipal corporation and a public school district under Washington law.

II. JURISDICTION AND STANDARD OF REVIEW

This is a special statutory appeal from action of a school board pursuant to RCW 28A.645.010, which provides:

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

RCW 28A.645.010 provides that the appeal shall be heard expeditiously by the Superior court.

III. SCHOOL BOARD DECISION BEING APPEALED

Appellants seek review of the School Board’s decisions of May 29, 2019 to approve action items #1, #2, and #3 of Section IX of the School Board agenda to approve and purchase “instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)” at a cost of \$1,034,132 (action item #1) and to approve and purchase “instructional materials for all middle school science classrooms in grades 6-8” at a cost of \$1,503,829 for materials and \$565,857 for “in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist” (action item #2) and to approve and purchase “instructional materials for all elementary school science classrooms in grades K-5” at a cost of \$2,368,870 for materials and \$5,040,674 for “in-house professional development and collaboration” (action item #3) without the School Board having voted to approve the membership of the Instructional Materials Committee as required by RCW 28A.320.230.

IV. FACTS

The foregoing is a summary of the procedural background of the School Board decision being appealed, based on Washington law and documents identified below that were available at the time of filing of the appeal. Pursuant to RCW 28A.645.020, the school board is required within twenty days of service of the notice of appeal, at its expense, to file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed, with such filings to be certified to be correct.

1. RCW 28A.320.230, “Instructional materials – instructional materials committee”, assigns final responsibility for approving or disapproving instructional materials to School Boards, based on recommendations made by a School Board-created instructional materials committee (IMC), so that a properly constituted instructional materials committee is central to the School Board’s adoption of instructional materials. RCW 28A.320.230(1)(f) states “Recommendation of instructional materials shall be by the district’s instructional materials committee in accordance

with district policy. Approval or disapproval shall be by the local school district's board of directors.”

2. RCW 28A.320.230 indicates that members of the instructional materials committee must be approved by the School Board. RCW 28A.320.230(1)(c) states that the School Board “shall ... adopt ... policy relative to the selection or deletion of instructional materials. Such policy shall: ... Establish an instructional materials committee to be appointed, with the approval of the school board, by the school district's chief administrative officer.”
3. The School Board Curriculum and Instruction Committee of the Whole met in public session on April 30, 2019 and approved forwarding three science curriculum adoption proposals to the full Board for a vote, which vote subsequently was held on May 29, 2019.
4. During the April 30, 2019 School Board Curriculum and Instruction Committee of the Whole meeting, the Board requested that the District's acting Chief Counsel Ronald Boy discuss some issues related to the science adoption proposals. During this discussion the District's acting Chief Counsel Ronald Boy indicated that the Board had adopted a curriculum adoption policy as called for by RCW 28A.320.230 but had not approved the members of the Instructional Materials Committee (IMC) as referenced by RCW 28A.320.230.
5. School Board Policy No. 2015 “selection & adoption of instructional materials”, is the Seattle School Board's curriculum adoption policy as called for by RCW 28A.320.230.
6. School Board Policy No. 2015 under “Definitions” states “School Board-adopted Instructional Materials, regardless of medium, are the primary instructional resource(s) to support the curriculum as outlined in state and college readiness standards” and that “Adoption is the process of evaluating and selecting basic instructional materials that culminates with formal action by the School Board”. [page 2]

7. School Board Policy No. 2015 states “it is the policy of the Seattle School Board to create an *Instructional Materials Committee*, pursuant to RCW 28A.320.230, and to direct the Superintendent or designee to create *Adoption Committees* for each specific adoption.” [page 1]
8. The instructional materials committee is a central mechanism whereby the School Board exercises its state-mandated direction, oversight, and sole final responsibility for approval or denial of curriculum adoptions. The School Board exercises overall guidance through its approval of IMC members by the School Board, and the IMC then establishes adoption committees to do the detailed work of making curriculum adoption recommendations. Further, the IMC is the School Board’s watchdog on the adoption process: the IMC certifies to the School Board that the adoption committees properly followed Board policy. Without School Board approval of IMC members, certification of the adoption process no longer reflects the Board’s authority, and the School Board’s state-mandated authority is critically diminished.
 - A. School Board Policy No. 2015 states “the purpose of the IMC is to: ... Approve the membership of the Adoption Committee”. [page 3]
 - B. School Board Policy No. 2015 states “In addition to the IMC, Seattle Public Schools completes text adoption work through adoption committees. The purpose of the adoption committee is to provide subject matter expertise and to provide the perspectives of family members who have current and/or past students in the grades for which the adoption is being contemplated.” [page 3]
 - C. School Board Policy No. 2015 states “the purpose of the IMC is to: ... Certify to the School Board that the final recommendation of the Adoption Committee was reached by following the process outlined in this policy and in any related Superintendent Procedures”. [page 3]

9. During the April 30, 2019 School Board Curriculum and Instruction Committee of the Whole meeting, the District's acting Chief Counsel Ronald Boy stated that he believed that there were two reasonable interpretations of RCW 28A.320.230 as follows:
 - A. Interpretation (A), which the District subscribes to, that RCW 28A.320.230 calls for the Board to adopt a policy laying out the membership requirements of the Instructional Materials Committee but does not require that the Board approve the actual members of the Committee; or,
 - B. Interpretation (B) , which appellants subscribe to, that RCW 28A.320.230 calls for the Board to adopt a policy laying out the membership requirements of the Instructional Materials Committee and also requires that the Board approve the actual members of the Committee.
10. The District's Interpretation (A) essentially asserts that all that RCW 28A.320.230(1)(f) requires is the adoption of a School Board policy that includes School Board approval of instructional materials committee members, but does not actually require that the policy be followed.
11. Appellants assert that the District's Interpretation (A) is not reasonable, because the plain language of the statute RCW 28A.320.230(1)(f) is that the instructional materials committee is to be appointed "with the approval of the school board", and further because adopting a "wink-wink" policy that only mentions required elements of state law means that the School Board has not actually adopted a policy that complies with RCW 28A.320.230. Thereby the School Board science adoption decisions violated RCW 28A.320.230 and are not valid.
12. Appellants allege specific injuries in fact, that appellants will be specifically and perceptibly harmed by the Board's actions.
13. Appellants assert that they have standing to bring this appeal and will be harmed and aggrieved by the School Board's actions. Appellants assert that it is likely that appellants will be harmed by impacts from the Board's actions. Appellants assert that it is likely that appellant taxpayers will be

harmed by having their tax money used in ways which harm public education and waste their tax money by the Board not considering alternatives that would be less expensive and/or of better educational quality and thereby cause higher subsequent taxes.

14. Appellants assert that they will be harmed by the adoption of science curricula through a process which was not subject to proper oversight by the School Board and which violated RCW 28A.320.230. The improperly adopted science curricula do not include physical textbooks, only licenses to use software. The improperly adopted science curricula will harm appellants' children through the use of substandard curricula at schools and through parents' diminished opportunity to help their children with homework because of the deliberate absence of physical textbooks, and it will harm appellant taxpayers through the misspending of appellants' tax money on substandard curricula and non-physical materials which will disappear once software licenses expire.
15. The School District has acknowledged that a number of participants on the instructional materials committee and on the adoption committees appointed by the IMC played prior and concurrent roles in bringing forward certain science curricula products in ways which at a minimum could create an appearance of conflicts of interest. A proper science curricula adoption process which complied with RCW 28A.320.230 in which the School Board could examine the backgrounds of potential members of the IMC rather than having no say in the appointment of members to the IMC and could thereby help reduce such problems and result in a broader consideration of quality curricula alternatives. Reversing the Board's adoption decisions would allow for such reasonable relief through a new statute-compliant curricula adoption process. The absence of such relief will likely lead to further similar problems. For example, the Board has scheduled action on another non-science curriculum adoption on June 26, 2019, proposing to waive most of its own policy, and still not complying with Board-required appointment of members of the IMC.

16. Attached to this filing is a copy of the May 29, 2019 School Board meeting minutes at which the three science adoption proposals were approved, as well as copies of the three School Board Action Reports on the three science adoption proposals.

V. ASSIGNMENTS OF ERROR

This appeal assigns error to the School Board's decisions of May 29, 2019 to approve action items #1, #2, and #3 of Section IX of the School Board agenda to approve and purchase "instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)" at a cost of \$1,034,132 (action item #1) and to approve and purchase "instructional materials for all middle school science classrooms in grades 6-8" at a cost of \$1,503,829 for materials and \$565,857 for "in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist" (action item #2) and to approve and purchase "instructional materials for all elementary school science classrooms in grades K-5" at a cost of \$2,368,870 for materials and \$5,040,674 for "in-house professional development and collaboration" (action item #3) without the School Board having voted to approve the membership of the Instructional Materials Committee as required by RCW 28A.320.230.

1. The School Board's actions were contrary to law.

- A. The School Board science adoption decisions violated RCW 28A.320.230 because the members of the instructional materials committee were not appointed "with the approval of the school board".
- a. The plain language of the statute RCW 28A.320.230(1)(f) is that the instructional materials committee is to be appointed "with the approval of the school board".
- b. Further, because adopting a "wink-wink" policy that only mentions required elements of state law but accords such elements no active implementing effect means that the School Board has not actually adopted a policy that complies with RCW 28A.320.230.

VI. PRAYER FOR RELIEF

WHEREFORE, Appellants respectfully request the following relief:

1. A formal Finding that before adopting instructional materials that RCW 28A.320.230 requires that a school board must vote to approve the membership of the Instructional Materials Committee.
2. An order reversing the School Board's decisions of May 29, 2019 to approve action items #1, #2, and #3 of Section IX of the School Board agenda to approve and purchase "instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)" at a cost of \$1,034,132 (action item #1) and to approve and purchase "instructional materials for all middle school science classrooms in grades 6-8" at a cost of \$1,503,829 for materials and \$565,857 for "in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist" (action item #2) and to approve and purchase "instructional materials for all elementary school science classrooms in grades K-5" at a cost of \$2,368,870 for materials and \$5,040,674 for "in-house professional development and collaboration" (action item #3) without the School Board having voted to approve the membership of the Instructional Materials Committee as required by RCW 28A.320.230.
3. An order nullifying the awarding of contracts and enjoining the District from taking actions and expending funds authorized by and flowing from the School Board's decisions of May 29, 2019 to approve the three science curricula.
4. Further equitable relief necessary to ensure that the District follows state law and District regulations as required by statute and state constitutional principles.

Listing of Appellants seeking review of the School Board’s decisions of May 29, 2019 to approve action items #1, #2, and #3 of Section IX of the School Board agenda to approve and purchase “instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)” at a cost of \$1,034,132 (action item #1) and to approve and purchase “instructional materials for all middle school science classrooms in grades 6-8” at a cost of \$1,503,829 for materials and \$565,857 for “in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist” (action item #2) and to approve and purchase “instructional materials for all elementary school science classrooms in grades K-5” at a cost of \$2,368,870 for materials and \$5,040,674 for “in-house professional development and collaboration” (action item #3) without the School Board having voted to approve the membership of the Instructional Materials Committee as required by RCW 28A.320.230.

1. Signature: _____

Dated this ____ day of _____, 2019

Printed name: _____

Address: _____

Phone: _____ Email: _____

2. Signature: _____

Dated this ____ day of _____, 2019

Printed name: _____

Address: _____

Phone: _____ Email: _____

3. Signature: _____

Dated this ____ day of _____, 2019

Printed name: _____

Address: _____

Phone: _____ Email: _____

Attachments:

- A. Minutes of May 29, 2019 Seattle School Board meeting
- B. School Board Action Report on May 29, 2019 to approve action item #1 of Section IX of the School Board agenda to approve and purchase “instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)” at a cost of \$1,034,132
- C. School Board Action Report on May 29, 2019 to approve action item #2 of Section IX of the School Board agenda to approve and purchase “instructional materials for all middle school science classrooms in grades 6-8” at a cost of \$1,503,829 for materials and \$565,857 for “in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist”
- D. School Board Action Report on May 29, 2019 to approve action item #3 of Section IX of the School Board agenda to approve and purchase “instructional materials for all elementary school science classrooms in grades K-5” at a cost of \$2,368,870 for materials and \$5,040,674 for “in-house professional development and collaboration”
- E. A copy of RCW 28A.320.230, “Instructional materials – instructional materials committee”
- F. A copy of Seattle School Board Policy No. 2015 “selection & adoption of instructional materials”
- G. A copy of RCW 28A.645

Attachment:

A. Minutes of May 29, 2019 Seattle School Board meeting

Attachment:

- B. School Board Action Report on May 29, 2019 to approve action item #1 of Section IX of the School Board agenda to approve and purchase “instructional materials for all students taking 9th grade Chemistry A (CHEM A), 9th grade Physics A (PHYS A), 10th grade Biology A (BIO A), 10th grade Biology B (BIO B), and 11th grade Physics B (PHYS B)” at a cost of \$1,034,132

Attachment:

- C. School Board Action Report on May 29, 2019 to approve action item #2 of Section IX of the School Board agenda to approve and purchase “instructional materials for all middle school science classrooms in grades 6-8” at a cost of \$1,503,829 for materials and \$565,857 for “in-house professional development and collaboration and a 1.0 FTE Curriculum Specialist”

Attachment:

- D. School Board Action Report on May 29, 2019 to approve action item #3 of Section IX of the School Board agenda to approve and purchase “instructional materials for all elementary school science classrooms in grades K-5” at a cost of \$2,368,870 for materials and \$5,040,674 for “in-house professional development and collaboration”

Attachment:

- E. A copy of RCW 28A.320.230, “Instructional materials – instructional materials committee”

Attachment:

- F. A copy of Seattle School Board Policy No. 2015 “selection & adoption of instructional materials”

Attachment:

G. A copy of RCW 28A.645