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SUPERIOR COURT CLERK  
SEATTLE, WA

Honorable Greg Canova  
Hearing: June 12, 2009  
10:30 AM

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

SHELLEY WILLIAMS, CHARITA  
DUMAS, JOY ANDERSON,

Plaintiffs,

v.

SEATTLE SCHOOL DISTRICT NO. 1,

Defendant.

NO. 09-2-10804-8 SEA

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

**A. RELIEF REQUESTED.**

The Court is requested to enter summary judgment against the defendant as follows:

a) reversing the decision of the defendant Seattle School District No. 1 ("the District") approving the school closure plan approved on January 29, 2009 as it relates to Cooper Elementary School; and

b) enjoining the defendant Seattle School District from taking any actions relating to the implementation of the school closure plan (as it relates to Cooper Elementary School) approved on January 29, 2009 prior to holding a new vote of the Board of the Seattle School District, preceded by a new school closure process that conforms with the provisions of RCW 28A.335.020, including, but not limited to, the holding of separate public hearings for the possible closure of Cooper

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT - 1

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ORIGINAL

1 Elementary School and the preparation of a written summary of the effects of  
2 closing Cooper Elementary.

3 **B. STATEMENT OF FACTS.**

4 **1. Challenged Action and Suit.**

5 This case challenges the decision of the Seattle School District to close  
6 Cooper Elementary School in West Seattle under the statutory appeal procedure  
7 found in ch. 28A.645 RCW. In particular, petitioners assert that the District did not  
8 comply with the terms of RCW 28A.335.020 in its decision to close Cooper  
9 Elementary. That statute requires the adoption of a school district policy prior to the  
10 closure of any school, which policy must provide for citizen involvement before the  
11 closure of any school, the preparation of a written summary analyzing the effects  
12 of the school closure and the holding of separate public hearings for each school  
13 that is under consideration for closure. That statute is Attachment A to the motion  
14 and is found at R.280.

15 The plaintiffs Shelley Williams, Charita Dumas and Joy Anderson here are  
16 the mothers of children who attend Cooper Elementary School and who would  
17 attend the school in the coming years were it not for the closure.

18 Under the terms of the statute providing for judicial review of Seattle School  
19 District actions, a notice of appeal must be filed which describes the errors made  
20 by the District. RCW 28A.645.010. Under RCW 28A.645.020, within twenty days  
21 of service of the petition, the school district must provide a "complete transcript of  
22 the evidence and papers and exhibits relating to the decision for which a complaint  
23 has been filed." The District has filed this transcript with the Court. It is some 2318  
24 pages long and is paginated with the reference "Transcript of Evidence" on each  
25 page. In addition, the District has provided audio CDs of several meetings of the  
26 school board. This statement of facts will refer to this already filed record, which will  
27 be referenced in this brief as "R.\_\_\_\_."

1 Cooper Elementary School is an elementary school in the Seattle School  
2 District located in West Seattle. R.1806. It has approximately 300 students in  
3 grades kindergarten through fifth grade. R.191. It is a new school, having been  
4 built in 1999. R.1781. The children of the plaintiffs herein attend Cooper  
5 Elementary.

6 **2. District Actions to Close Cooper Elementary.**

7 At a Seattle School District meeting on October 29, 2008, the District's Board  
8 authorized the Superintendent to commence a process to close several schools  
9 within the District for budgetary and capacity reasons. R.131. The District adopted  
10 Resolution 2008/09-2, which directed the Superintendent to:

11 evaluate the district capacity needs, including areas of excess  
12 capacity and areas where capacity is needed and this evaluation shall  
13 include an evaluation of possible program closures, program  
14 relocations and building closures.

15 R.131.

16 When the District decided to start a round of school closures, it had a written  
17 policy that set notice requirements, public participation procedures, the subjects for  
18 a written summary of impacts and public hearing procedures, referenced by the  
19 District as "Board Policy H01.00." This existing policy is Attachment B hereto. This  
20 policy had been in effect since 1997 according to its terms. This Policy stated that  
21 it was intended to comply with the terms of RCW 28A.335.020. See Attachment B.  
22 In the same resolution that directed evaluation of school closures, the District also  
23 directed the examination of Board Policy H01.00:

24 the Board hereby directs the Superintendent to develop a new  
25 communication provision for Policy H01.00, including communication  
26 methods relevant to the 21<sup>st</sup> century, such as communication via the  
27 Internet and other media forms, while ensuring that state  
28 requirements regarding notice are met.

29 R.131.

30 On November 4, 2008, the Superintendent issued her recommendation to

1 change Board Policy H01.00. R.140-43. The modified version of Board Policy  
2 H01.00 was attached. R.144-45. See Attachment "C". The proposed amendments  
3 made three changes to the existing terms of Board Policy H01.00. First, the  
4 previously required publication "in local newspapers in the affected areas of the  
5 City" of the notice of public hearings for schools to be closed was deleted. Second,  
6 there was to be additional notice to "potentially affected communities" via several  
7 media. Third, and critical to this case, was the change of the application of the  
8 policy from the closure of "schools" to the closure of "school buildings for  
9 instructional purposes."

10 The report stated that the change to Board Policy H01.00 should take effect  
11 immediately and that if it were approved, that a timetable should be set for "the  
12 current closure process is as follows," establishing a date of January 29, 2009 for  
13 District "action on closure motion." R.140. The consequence of not changing Board  
14 Policy H01.00 was explained to be serious:

15 If the policy is not amended and notices in local newspapers are still  
16 required to comply with the existing timeline, Board Action would be  
17 delayed until at least mid-February. With this timeline budget, staffing  
18 and enrollment would be delayed. This delay would likely cause us  
19 to miss our various classified and certificated staffing notice  
20 requirements. Additionally, families would not be notified of their Fall  
21 2009 assignments until mid-June - potentially after school has let out  
22 for summer.

23 R.141. There was no discussion as to why the closure process was not begun  
24 earlier in an effort to meet the existing terms of Board Policy H01.00.

25 The explanation as to why Board Policy H01.00 was changed from "schools  
26 to "school buildings" was characterized as a "minor" amendment in the  
27 memorandum:

28 Two other minor amendments have been made. A typographical  
error was fixed . . . and the first sentence of the policy is amended to  
read "school building(s) for instructional purposes." This amendment  
brings the policy in line with RCW 28A.335.020, which relates to a  
closure "for instructional purposes".

1 R.142 (emphasis in original). The District adopted the revised Board Policy H01.00  
2 on November 12, 2008. R.149. The amendments proposed would change the  
3 application of the Policy H01.00 from "the decision to close any school" to "the  
4 decision to close any school building(s) for instructional purposes." The revised  
5 version of Board Policy H01.00 is Attachment C hereto.

6 On November 25, 2009, the Superintendent issued her Preliminary  
7 Recommendations for school closures. R.151-195. Under the proposal, the  
8 Pathfinder K-8 school, an alternative school, would be relocated to Arbor Heights  
9 Elementary and those students would be reassigned. R.190. One of the  
10 alternatives for the relocation of Pathfinder K-8 was to move to the Cooper  
11 Elementary School, which would have required the closure of Cooper Elementary  
12 and the dispersal of its students to other schools. She did not recommend the  
13 relocation of Pathfinder to Cooper Elementary, nor Cooper's closure, for the  
14 reasons stated in her accompanying analysis. R.191-92. The reasons Cooper was  
15 not selected were directly related to the circumstances of students and their  
16 parents, such as the plaintiffs here:

- 17 ▶ If 65 Cooper students were assigned to West Seattle  
18 Elementary that would leave 56 Cooper students who live in  
19 the West Seattle North cluster without a building in their  
20 cluster. Students are guaranteed a seat at an elementary  
21 school in their cluster. The decision to relocate Pathfinder K-8  
22 to Cooper would result in students being mandatorily assigned  
23 outside of their cluster, which would violate the student  
24 assignment plan.
- 25 ▶ In addition, this would result in significant transportation costs  
26 and time for students on buses, because students would be  
27 transported from the north end of West Seattle to the south  
28 end.
- ▶ Because this plan would violate the current student  
assignment plan we cannot make the recommendation of  
Pathfinder K-8 to Cooper.

26 *Id.* The analysis also included a written summary of effects of Arbor Height  
27 Elementary School closure if Pathfinder K-8 was relocated there and Arbor Heights  
28

1 Elementary was closed. That written summary discussed many of the items in the  
2 revised version of Board Policy H01.00. See R.276-279. A notice of proposed  
3 closures was provided to all parents and staff in the District. R.285. That notice  
4 gave no indication that Cooper Elementary was proposed for closure, accordingly,  
5 no public hearings were scheduled for Cooper, and no written summary of the  
6 effects of closing Cooper Elementary was prepared. R.285.

7 Notwithstanding this notice, there was discussion that Cooper would be  
8 considered for closure at the meeting held on the same night (November 25, 2008)  
9 that the notice was issued. R.1241. This was found in an update provided to the  
10 School Board on December 3, 2008 (R.1222), less than two weeks after the  
11 November 25 meeting and report. The update stated:

12 At the work session on November 25 the School Board indicated that  
13 the option of altering the Student Assignment Plan to permit the  
location of Pathfinder at Cooper should be evaluated.

14 R.1241. Just a week later, on December 9, 2008, the District staff indicated in a  
15 report to the Board that the closure of Cooper was now a likely possibility:

16 Given the Board's decision to lift the restrictions of the Student  
17 Assignment Plan to allow for the assignment of Cooper students to  
West Seattle North or South, moving Pathfinder to Cooper may be  
18 included in the Final Recommendation.

19 R.1312. There was still no written analysis of the possible closure of Cooper  
20 Elementary and no hearing was noticed or scheduled for Cooper consistent with  
21 notice provided for the hearings for other school closures.

22 Eventually, the District did reverse course and included Cooper Elementary  
23 on the list of schools to be closed in the Final Recommendations dated January 6,  
24 2009. R.1750. In this recommendation, the District would move Pathfinder K-8 to  
25 the Cooper Elementary building instead of to Arbor Heights Elementary. R.1771,  
26 2037. The result of this relocation was that "it will require that most of the Cooper  
27 students be reassigned." R.1771; see also R.2037. After the final  
28

1 recommendations of the District there was still no separate hearing for Cooper  
2 scheduled and no written analysis of the impacts of closure of that school as was  
3 provided for Arbor Heights at R.276-279.

4 The School District finally decided to close Cooper Elementary School in  
5 actions taken on January 29, 2009. R.2271 and 2278. The District's action was  
6 to move Pathfinder K-8 to Cooper Elementary and "reassign" substantially all of the  
7 Cooper Elementary students.

8 **C. STATEMENT OF ISSUES.**

9 a. Did the District violate the terms of RCW 28A.335.020 regarding the  
10 closure of Cooper Elementary School when it modified its policies to apply only to  
11 decisions to close "school buildings," instead of "schools?"

12 b. Did the District violate the terms of RCW 28A.335.020 by not providing  
13 notice of the decision to close Cooper Elementary, by not providing a written  
14 analysis of the effects of closing Cooper Elementary and by not holding a separate  
15 public hearing on the closure of Cooper Elementary?

16 c. Are there genuine issues of material fact concerning the foregoing issues,  
17 in light of the certified record of the District, that would support denial of this  
18 summary judgment motion?

19 **D. EVIDENCE RELIED UPON.**

20 The plaintiffs relied upon the Certified Record provided by the District and  
21 filed with the Court.

22 **E. AUTHORITY.**

23 **1. Plaintiffs Are Entitled to Summary Judgment under the Posture**  
24 **of this Case.**

25 Summary judgment is appropriate "if the pleadings . . . together with the  
26 affidavits, if any, show that there is no genuine issue of material fact and that the  
27 moving party is entitled to judgment as a matter of law." CR 56. *City of Seattle v.*

1 *Mighty Movers, Inc.*, 152 Wn.2d 343, 348, 96 P.3d 979 (2002). All questions of law  
2 are reviewed *de novo*. *Liberty Mutual Ins. Co. v. Tripp*, 144 Wn.2d 1, 10-11, 25 P.3d  
3 997 (2001).

4 As described above, the statute governing review of school board decisions,  
5 ch. 28A.645 RCW, provides that the District will file a "complete transcript" of the  
6 record on which the decision was made. RCW 28A.645.020. Thereafter the statute  
7 provides, in RCW 28A.645.030 that:

8 Any appeal to the superior court shall be heard *de novo* by the  
9 superior court. Such appeal shall be heard expeditiously.

10 With the filing of this record there are no factual issues to be resolved and thus  
11 summary judgment is appropriate.

12 **2. The School District Violated the Terms of RCW 28A.335.020 by**  
13 **Changing the Direction of Policy from School Closures to**  
14 **Building Closures.**

15 In 1980, the Court of Appeals decided the case of *Coughlin v. Seattle School*  
16 *Dist. No. 1*, 27 Wn. App. 888, 621 P.2d 183, 185 (1980). In that case, Ms.  
17 Coughlin challenged school closure decisions under the terms of the State  
18 Environmental Policy Act, ch. 43.21C RCW (SEPA). She alleged that certain  
19 identified school closure decisions had a probable significant impact on the  
20 environment and that an environmental impact statement was required under SEPA  
21 prior to any school closure decision. The Court of Appeals ruled that the precursor  
22 to the present review statute (RCW 28A.88.010) allowed persons to challenge  
23 school closure actions under SEPA:

24 Coughlin seeks review under the statutory writs procedure and the  
25 school board appeal statute, RCW 28A.88.010. These statutes can  
26 provide jurisdiction in SEPA cases, but only when certain criteria are  
27 satisfied.

28 27 Wn.App. at 892. The District prevailed in that case on the basis of standing, with  
the Court finding that Ms. Coughlin "did not reside in or adjacent to any of the  
elementary school attendance areas affected by the five school closures". 27



1 Wn.App. at 891. The Court declined to rule on the underlying SEPA issue even  
2 though the District requested a decision on the matter: "Because of our holding that  
3 Coughlin lacks standing, we decline the District's request to decide whether an EIS  
4 was required." *Id.*

5 Three years after the *Coughlin* decision, the legislature stepped in and  
6 resolved the question of whether school closure decisions would be subject to  
7 SEPA. Thus in 1983, the legislature passed Ch. 109 of the Laws of 1983. The bill  
8 had two parts. First, Section 1 exempted school districts from SEPA entirely; this  
9 section was codified into RCW 43.21C.038:

10 Nothing in RCW 43.21C.030(2)(c) shall be construed to require the  
11 preparation of an environmental impact statement or the making of a  
12 threshold determination for any decision or any action commenced  
13 subsequent to September 1, 1982, pertaining to a plan, program, or  
14 decision for the closure of a school or schools or for the school  
15 closure portion of any broader policy, plan or program by a school  
16 district board of directors.

17 Section 2 of the bill created a requirement that school districts make special  
18 provisions for closures, requiring an adopted policy, notice and public hearings:

19 Before any school closure, a school district board of directors shall  
20 adopt a policy regarding school closures which provides for citizen  
21 involvement before the school district board of directors considers the  
22 closure of any school for instructional purposes. The policy adopted  
23 shall include provisions for the development of a written summary  
24 containing an analysis as to the effects of the proposed school  
25 closure. The policy shall also include a requirement that during the  
26 ninety days before a school district's final decision upon any school  
27 closure, the school board of directors shall conduct hearings to  
28 receive testimony from the public on any issues related to the closure  
of any school for instructional purposes. The policy shall require  
separate hearings for each school which is proposed to be closed.

The policy adopted shall provide for reasonable notice to the  
residents affected by the proposed school closure. At a minimum, the  
notice of any hearing pertaining to a proposed school closure shall  
contain the date, time, place, and purpose of the hearing. Notice of  
each hearing shall be published once each week for two consecutive  
weeks in a newspaper of general circulation in the area where the  
school, subject to closure, is located. The last notice of hearing shall  
be published not later than seven days immediately before the final  
hearing.

This section is now codified as RCW 28A.335.020. This statute is attached as

1 Attachment A. As may be seen, essentially the legislature, in Laws of 1983, ch.  
2 109, eliminated the requirement for SEPA compliance with school closures but  
3 substituted a requirement that the local school districts adopt policies for school  
4 closures together with notice, public hearings, and a written analysis of the effects  
5 of the proposed school closure..

6 In 1997, the District adopted a policy for school closures that reflected the  
7 requirements of RCW 28A.335.020. See Policy H01.00 which was adopted in  
8 January 1996/August 1997. See Attachment B. This policy, compliant with  
9 statutory requirements, calls for multiple matters to be considered prior to a school  
10 closure decision, including:

- 11 • development, presentation and publication of the analysis and effects  
12 of proposed school closures, which included
  - 13 - criteria for school closures
  - 14 - demographic and integration effects
  - 15 - relationship between the proposed closure to any on-going  
16 established long range facility use program
  - 17 - the proposed site classification
- 18 • public review and distribution of recommendations
- 19 • public hearings for each proposed school closure to be held at or near  
20 the school to be closed
- 21 • public review of the final recommendation
- 22 • public hearing of the final recommendation for closures
- 23 • notice of hearings in daily newspapers and in local newspapers in the  
24 affected areas of the city.

25 Notwithstanding the terms of the statute, the District decided after the school  
26 closure process had begun to change the policy. It decided that, rather than  
27 applying to the "decision to close any school," the policy would instead apply to the

1 to close any school building(s) for instructional purposes. . . .” See R. 144-45. The  
2 practical effect was that the District could avoid having to prepare additional  
3 analyses of the effects of school closure decisions, no notices of closure would be  
4 required and, significantly, there would be no hearings noticed or required for school  
5 closures unless “buildings” were involved.

6 This had a direct effect on decision making for Cooper Elementary School  
7 because the District will not be eliminating the Cooper Elementary School building.  
8 As described above, the District planned to relocate the students, teachers and staff  
9 from the school and bring another school, Pathfinder K-8, into the Cooper building.  
10 The students, teachers and staff will be reassigned and relocated to other schools  
11 in West Seattle. The practical effect of the District’s actions is to eliminate Cooper  
12 Elementary School.

13 The action of the District in amending Policy H01.00 violates RCW  
14 28A.335.020. School closures were singled out for special treatment by the  
15 legislature because of the impact that occurs to parents and students from the  
16 closure of a school. Examples of the kinds of impacts that can occur to students  
17 and parents from the closure of Cooper Elementary are found at R.192 cited above.  
18 Significantly, the impacts on students and parents at Cooper Elementary occur  
19 whether the building is torn down or has another school relocated into the building:  
20 under both circumstances the students are reassigned and dispersed to other  
21 schools. This is why “demographic and integration effects” are studied by Board  
22 Policy H01.00; these factors are unrelated to the use of a building. Students are  
23 dispersed and dislocated and sent to other schools; teachers are either laid off or  
24 reassigned and staff receive the same treatment. Transportation becomes a  
25 serious problem, social relationships between students, staff and parents are  
26 drastically affected. All this is why the legislature requires public notice, public  
27 hearings and analysis of closure decisions.

1 Now, at the eleventh hour, in an attempt to avoid notice and hearings and to  
2 avoid consideration of the effects of closures, the District has modified the  
3 standards to substitute "school buildings" for "schools" in the policy. It is clear from  
4 the staff report of this District that this was out of expedience because of timing  
5 issues. This means that if a school is closed, the criteria do not apply unless the  
6 "building" is no longer used for instruction. The District says that so long as the  
7 school is used for any instruction purposes, then RCW 28A.335.020 does not apply  
8 and the public interest criteria do not apply.

9 The District's position turns public interest and the law on its head. The  
10 elimination of a school, as with Cooper Elementary, creates all of the social and  
11 educational displacement the statute and the District's policy was intended to  
12 address. No one seriously contends that because the building will still be used for  
13 instruction, with different students, that the impacts on Cooper students, parents,  
14 teachers and staff will be any less.

15 The statute and caselaw make it clear that there is a difference between a  
16 "school building" and a "school." For example, "school buildings" are described in  
17 RCW 28A.335.010 as physical structures. The physical "building" would meet the  
18 definition of a "schoolhouse" under RCW 28A.335.240. Further, the definition of a  
19 "school" under the Public School title of Washington law, Title 28A, is as follows:

20 28A.150.010. Public schools

21 Public schools shall mean the common schools as referred to in  
22 Article IX of the state Constitution and those schools and institutions  
of learning having a curriculum below the college or university level as  
now or may be established by law and maintained at public expense.

23 (Emphasis supplied). As the legislature recognized, a school, such as Cooper  
24 Elementary, is not just a building, but an "institution of learning." Our court confirms  
25 this meaning:

26 A school is an institution consisting of a teacher and pupils,  
27 irrespective of age, gathered together for instruction in any branch of  
learning. *Weisse v. Board of Education of City of New York*, 1941,

1 178 Misc. 118, 32 N.Y.S.2d 258; *Board of Education of City School*  
2 *District of City of Cleveland v. Ferguson*, 1941, 68 Ohio App. 514, 39  
3 N.E.2d 196. The three essential elements of a school are (1) the  
4 teacher, (2) the pupil or pupils, and (3) the place or institution. If the  
5 alleged school has no teacher, then it does not qualify as a school.  
6 There is one standard which the legislature made applicable to all  
7 schools, both public and private, and that standard is that the teacher  
8 must be qualified to teach and hold a teaching certificate. Laws of  
9 1909, chapter 97, subchapter 4, Art. VII, § 1, p. 306, provides:

10 "No person shall be accounted as a qualified teacher  
11 within the meaning of the school law, who is not the  
12 holder of a valid teacher's certificate or diploma issued  
13 by lawful authority of this state."

14 The Wolds had the place and the pupil, but not a teacher qualified to  
15 teach in the state of Washington. Their alleged private school did not  
16 legally qualify as such.

17 The legislature granted to the county or district superintendent  
18 of schools the power to excuse one who was not attending public  
19 school from the penalties of the compulsory school attendance act,  
20 provided such child was attending an "approved private school."

21 *State ex rel. Shoreline School Dist. No. 412 v. Superior Court for King County,*  
22 *Juvenile Court*, 55 Wn. 2d 177, 182, 346 P.2d 999 (1959) (emphasis supplied).

23 This conclusion is reinforced in *Alexander v. Employment Sec. Dept. of State of*  
24 *Wash.*, 38 Wn. App. 609, 620, 688 P.2d 516, 523 (1984):

25 A school is an institution consisting of a teacher and pupils,  
26 irrespective of age, gathered together for instruction in any branch of  
27 learning. *State ex rel. Shoreline School District v. Superior Court*, 55  
28 Wn. 2d 177, 346 P.2d 999 (1959). An educational institution is  
generally defined in Black's Law Dictionary (5th ed. 1979) as:

A school, seminary, college, university, or other  
educational establishment, not necessarily a chartered  
institution. As used in a zoning ordinance, the term may  
include not only buildings, but also all grounds  
necessary for the accomplishment of the full scope of  
educational instruction, including those things essential  
to mental, moral, and physical development.  
*Commissioners of District of Columbia v. Shannon &*  
*Luchs Const. Co.*, 57 App. D.C. 67, 17 F.2d 219, 220.

These cases emphasize the self-evident conclusion that schools are more  
than buildings, but rather institutions that include the students and those who  
educate them. Indeed, the legislature, in the previous section of chapter 28A.335  
RCW, specifically references "school buildings":

Every board of directors, unless otherwise specifically provided by

1 law, shall:

2 (1) Cause all school buildings to be properly heated, lighted  
and ventilated and maintained in a clean and sanitary condition; and

3 2) Maintain and repair, furnish and insure such school  
buildings.

4 RCW 28A.335.010. If the legislature had meant requirements for "school closures"  
5 in RCW 28A.335.020 to mean just "school buildings" they would have dropped in  
6 the term from the previous section. Obviously, when RCW 28A.335.020 was  
7 adopted in 1983, the legislature clearly intended to use the term "school" as defined  
8 in the statute and caselaw, not just a "school building." The legislature is presumed  
9 to know the existing state of the caselaw in those areas in which it is legislating.  
10 *Woodson v. State*, 95 Wn.2d 257, 261-62, 623 P.2d 683 (1980).

11 The expedient interpretation provided by the District is not consistent with the  
12 clear intention of the statute. Indeed, under Washington law, the spirit or purpose  
13 of an enactment prevails over any inept language. *Fraternal Order of Eagles,*  
14 *Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash.2d  
15 224, 239, 59 P.3d 655, 663 (2002). The plain language of the statute is to assure  
16 those who are interested in the elimination of a school to have certain incidents of  
17 participation in the decision, notice, an analysis by the district of the impacts of the  
18 school closure and an opportunity to express positions and concerns at a public  
19 hearing specifically for the school to be closed.

20 The context of the statute is important in its construction: "The language of  
21 a statute must be read in context with the entire statute and construed in a manner  
22 that is consistent with the general purpose of the statute. *Graham v. State Bar*  
23 *Ass'n*, 86 Wash.2d 624, 627, 548 P.2d 310 (1976)." *Hastings v. Grooters*, 144  
24 Wash.App. 121, 127, 182 P.3d 447 (2008). Here the context of the statute is that  
25 Section 1 of chapter 109 of the laws of 1983 eliminated school closures from SEPA,  
26 while Section 2 (now RCW 28A.335.020) continued the notice, analysis and public  
27 hearing requirements of SEPA in a different format.

1       The District seems to place emphasis on the statutory reference to "the  
2 closure of any school for instructional purposes" in RCW 28A.335.020. Once again,  
3 the general purpose of the statute references the concerns that parents are likely  
4 to have when a school no longer offers instruction for their children, requiring the  
5 parents to find another school. In this context, Cooper Elementary School is being  
6 closed for instructional purposes. Education and instruction for its students is no  
7 longer provided and these students will have to look elsewhere for instruction.  
8 Significantly, the legislature did not use the term "school buildings," the more  
9 specific term, but used the broader term "school" in RCW 28A.335.020. The  
10 District's attempt to narrow the context of its policy inconsistent with the terms of the  
11 statute fails.

12       If the students, teachers and staff are removed, and relocated to other areas,  
13 then the school is closed, no matter whether the building the school was in remains  
14 standing, or is used for another school. Cooper Elementary School will be closed  
15 for instructional purposes as substantially all of its students, teachers and staff will  
16 be dispersed to other locations in the District.

17       What is most alarming about the cynical change made in the school closure  
18 policy was that the revision's singular purpose was to eliminate public notice, public  
19 information, public hearings and public involvement in the school closure process.  
20 But RCW 28A.335.020 is not a substantive statute; its sole purpose is to require  
21 analysis of the effects of school closure, the opportunity for the public to participate  
22 and for public hearings. This change comes after 12 years of a policy that  
23 accounted for public involvement when a "school" was closed.

24       The District's change in its policy from closure of "schools" to "school  
25 buildings" violated RCW 28A.335.020 and requires the reversal of school district  
26 decisions made without compliance with the statute.

1                   **Provide Public Notice, Hearings and a Written Summary of the**  
2                   **Impacts for the Closure of Cooper School Required by the**  
3                   **Statute.**

4           As described above, the District modified its policy regarding school closures  
5 to eliminate from public notice, review and hearings those situations where the  
6 "school" was closed, but the "school building" would still be used for educational  
7 purposes. This resulted in the District rescinding the "policy" that was consistent  
8 with RCW 28A.335.020. As such the District now lacks the "policy" required by the  
9 statute.

10          As a result, Cooper Elementary School students, parents and teachers were  
11 not given notice, public hearings, an analysis of the effects of closure or individual  
12 notice as required by the statute and the long established policy of the District.  
13 Copies of the newspaper notice do not include any reference to the closure of  
14 Cooper Elementary (copies of these notices are in the record at R. 2279-2318).

15          RCW 28A.335.020 requires three things to be done by a district before a  
16 school can be closed:

17               a. the adoption of a "a policy regarding school closures which  
18 provides for citizen involvement before the school district board of  
19 directors considers the closure of any school for instructional  
20 purposes."

21               b. a "written summary containing the an analysis as to the  
22 effects of the proposed school closure"

23               c. that the school board "shall conduct hearings to receive  
24 testimony from the public on any issues related to the closure of any  
25 school for instructional purpose," with the condition that "the policy  
26 shall require separate hearings for each school which is proposed to  
27 be closed."

28          Though Cooper Elementary School was being actively considered for closure  
on the same day that notices were issued, the District did not schedule or notice any  
public hearings for its closure, though public hearings were scheduled for the  
closure of other schools. R.1215-1281. Indeed, the District has prepared as a part  
of its administrative record the verbatim transcripts of the public hearings on the  
other schools, including T.T. Minor (R.1376-1463), Pinehurst Elementary (R.1464-



1           **3. Having changed Board Policy H01.00, the District Failed to**  
2           **Provide Public Notice, Hearings and a Written Summary of the**  
3           **Impacts for the Closure of Cooper School Required by the**  
4           **Statute.**

5           As described above, the District modified its policy regarding school closures  
6           to eliminate from public notice, review and hearings those situations where the  
7           "school" was closed, but the "school building" would still be used for educational  
8           purposes. This resulted in the District rescinding the "policy" that was consistent  
9           with RCW 28A.335.020. As such the District now lacks the "policy" required by the  
10          statute.

11          As a result, Cooper Elementary School students, parents and teachers were  
12          not given notice, public hearings, an analysis of the effects of closure or individual  
13          notice as required by the statute and the long established policy of the District.  
14          Copies of the newspaper notice do not include any reference to the closure of  
15          Cooper Elementary (copies of these notices are in the record at R. 2279-2318).

16          RCW 28A.335.020 requires three things to be done by a district before a  
17          school can be closed:

18               a. the adoption of a "a policy regarding school closures which  
19               provides for citizen involvement before the school district board of  
20               directors considers the closure of any school for instructional  
21               purposes."

22               b. a "written summary containing the an analysis as to the  
23               effects of the proposed school closure"

24               c. that the school board "shall conduct hearings to receive  
25               testimony from the public on any issues related to the closure of any  
26               school for instructional purpose," with the condition that "the policy  
27               shall require separate hearings for each school which is proposed to  
28               be closed."

29          Though Cooper Elementary School was being actively considered for closure  
30          on the same day that notices were issued, the District did not schedule or notice any  
31          public hearings for its closure, though public hearings were scheduled for the  
32          closure of other schools. R.1215-1281. Indeed, the District has prepared as a part  
33          of its administrative record the verbatim transcripts of the public hearings on the

1 other schools, including T.T. Minor (R.1376-1463), Pinehurst Elementary (R.1464-  
2 1519), Van Asselt (R.1529-1628), Pathfinder (R.1629-1706), Old John Hay (R.1707-  
3 1748) and Lowell (R.2048-2124). There was no such public hearing for the closure  
4 of Cooper Elementary School and accordingly no record of issues that might have  
5 been raised by interested parties.

6 The record prepared by the District demonstrates that the requirements of  
7 the statute or established District policy were not met.

8 On November 25, 2008, the school superintendent issued her "Preliminary  
9 Capacity Management & Building Closure Recommendations." R.151-296. These  
10 recommendations included closing several schools and relocating "programs" or  
11 schools. The schedule called for public hearings to be held in several schools  
12 proposed for closure. However, Cooper School was not mentioned in this list in  
13 any manner. These recommendations were sent to each parent at Cooper  
14 Elementary School. Understandably, Cooper Elementary School parents believed  
15 that their school was not being closed or considered for closure. However, on the  
16 same day that the notices were sent out, the District was also actively considering  
17 the closure of Cooper Elementary School.

18 Similarly, there was no written summary of the impacts of closing Cooper  
19 Elementary School. However, the District did prepare a written summary of impacts  
20 to all the other schools scheduled for closure. See R.221-279. Among the other  
21 matters to be considered are "demographic and integration effects," which were  
22 considered for the other schools, but not for Cooper.

23 As may be seen, the District failed to meet the minimum requirements of the  
24 statute because it improperly amended its "policy."

## 25 **F. CONCLUSION.**

26 The plaintiffs have demonstrated that the District failed to comply with the  
27 statutory mandate of RCW 28A.335.020. On the eve of the most recent round of  
28

1 school closures, the District changed its 12 year policy of analysis, public  
2 involvement and hearings at each "school" to be closed. It limited its reviews to only  
3 those reviews that involve the closure of "school buildings for instructional  
4 purposes." This meant that Cooper Elementary School parents, students, teachers  
5 and staff were denied the long established rights from the 1983 legislation and from  
6 the preexisting and statutorily compliant version of Board Policy H01.00. The  
7 District's actions, which had as their only purpose the elimination of rights to the  
8 public to reasonable participation in closure decisions, were clearly in violation of  
9 RCW 28A.335.020.

10 The plaintiffs are entitled to summary judgment and a reversal of the decision  
11 of the District to close Cooper Elementary School.

12 DATED: MAY 15, 2009

14 ARAMBURU & EUSTIS LLP

15 

16 J. Richard Aramburu  
17 WSBA 466  
18 Attorney for Plaintiffs  
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**RCW 28A.335.020**

**School closures — Policy of citizen involvement required — Summary of effects — Hearings — Notice.**

Before any school closure, a school district board of directors shall adopt a policy regarding school closures which provides for citizen involvement before the school district board of directors considers the closure of any school for instructional purposes. The policy adopted shall include provisions for the development of a written summary containing an analysis as to the effects of the proposed school closure. The policy shall also include a requirement that during the ninety days before a school district's final decision upon any school closure, the school board of directors shall conduct hearings to receive testimony from the public on any issues related to the closure of any school for instructional purposes. The policy shall require separate hearings for each school which is proposed to be closed.

The policy adopted shall provide for reasonable notice to the residents affected by the proposed school closure. At a minimum, the notice of any hearing pertaining to a proposed school closure shall contain the date, time, place, and purpose of the hearing. Notice of each hearing shall be published once each week for two consecutive weeks in a newspaper of general circulation in the area where the school, subject to closure, is located. The last notice of hearing shall be published not later than seven days immediately before the final hearing.

[1983 c 109 § 2. Formerly RCW 28A.58.031.]

**Notes:**

Application of RCW 43.21C.030(2)(c) to school closures: RCW 43.21C.038.

Attachment A




## SCHOOL CLOSURES

H01.00  
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### POLICY

It is the policy of the Seattle School Board that prior to the decision to close any school(s) the following steps will occur:

1. Development and presentation of the Superintendent's preliminary recommendation for school closure and publication of analysis of possible effects of proposed school closure to include:
  - A. Criteria for school closure
  - B. Demographic and desegregation effects
  - C. Relationship of the proposed closure to any on-going, established long-range program for facility use, and
  - D. Proposed site classification
2. Public review of the Superintendent's preliminary recommendation for school closure (minimum of thirty (30) days). A copy of the recommendation and summary shall be made available in each school proposed for closure and distributed to each school parent organization and community council in the affected area.
3. Public hearing(s) for each proposed site on the Superintendent's preliminary recommendation for school closure will be held in the general geographic area of the affected building. The public hearing will be held in the affected school where feasible.
4. Presentation of the Superintendent's final recommendation for school closure.
5. Public review of the Superintendent's final recommendation for school closure (minimum of fourteen (14) days).
6. Public hearing on Superintendent's final recommendation for school closure.

 <b>SEATTLE PUBLIC SCHOOLS</b>	<b>SCHOOL CLOSURES</b>	<b>H01.00 Revised Jan 1996 Page 2 of 2</b>
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7. School Board discussion of Superintendent's final recommendation for school closure.
8. School Board Action on school closure. (The Board's final decision shall be made within ninety (90) days of the time hearings are held for each proposed site for closure (#3 above) and no less than seven (7) days after the public hearing on the Superintendent's final recommendation for school closure.)

Notices of the hearings in steps 3 and 6 above containing the date, time, place, and purpose of the hearings shall be published in the Seattle daily newspapers and in the local newspapers in the affected areas of the City.

These notices shall be published once each week for two consecutive weeks, with the last notice to be published not less than seven (7) days before the hearings

In the event exigent circumstances make adherence to the above policy infeasible, the Board of Directors may so declare and make a school closure decision following a process consistent only with the minimum requirements of RCW 28A.335.020.


In the case of proposed temporary relocation of students and staff during periods of school building reconstruction or renovation, the Board of Directors may make a school closure decision following a process consistent only with the minimum requirements of RCW 28A. 335.020.

Reference: RCW 28A.335.020

Revised Jan. 1996

**BEST AVAILABLE IMAGE POSSIBLE**


Former Code: E61.00

	<p>SCHOOL CLOSURES</p>	<p>H01.00 Revised <del>AUG 1997</del> November 2008 Page 1 of 2</p>
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## POLICY

It is the policy of the Seattle School Board that prior to the decision to close any school buildings(s) for instructional purposes the following steps will occur:

1. Development and presentation of the Superintendent's preliminary recommendation for school closure(s) and publication of analysis of possible effects of proposed school closure(s) to include:
  - A. Criteria for school closure(s)
  - B. Demographic and integration effects
  - C. Relationship of the proposed closure(s) to any on-going, established long-range program for facility use, and
  - D. Proposed site classification
2. Public review of the Superintendent's preliminary recommendation for school closure(s) (minimum of thirty (30) days). A copy of the recommendation and summary shall be made available in each school proposed for closure(s) and distributed to each school parent organization and community council in the affected area.
3. Public hearing(s) for each proposed site on the Superintendent's preliminary recommendation for school closure(s) will be held in the general geographic area of the affected building. The public hearing will be held in the affected school where feasible.
4. Presentation of the Superintendent's final recommendation for school closure(s).
5. Public review of the Superintendent's final recommendation for school closure(s) (minimum of fourteen (14) days).
6. Public hearing on Superintendent's final recommendation for school closure(s).

	<p>SCHOOL CLOSURES</p>	<p>H01.00 Revised <del>AUG 1997</del> November 2008 Page 2 of 2</p>
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7. School Board discussion of Superintendent's final recommendation for school closure(s).
8. School Board Action on school closure(s). (The Board's final decision shall be made within ninety (90) days of the time hearings are held for each proposed site for closure(s) (#3 above) and no less than seven (7) days after the public hearing on the Superintendent's final recommendation for school closure(s).)

Notices of the hearings in steps 3 and 6 above containing the date, time, place, and purpose of the hearings shall be published in the Seattle daily newspapers, ~~and in the local newspapers in the affected areas of the City.~~

These notices shall be published once each week for two consecutive weeks, with the last notice to be published not less than seven (7) days before the hearings.

In addition to the notices in the daily newspapers, outreach to potentially impacted communities shall be achieved via a combination of some or all of the following methods:

- Notices in local newspapers
- Notices on the Seattle Public Schools website & television station
- Notices on local television and radio stations
- Notices sent to community centers, libraries, and city neighborhood centers
- Notices sent to families via automated telephone service
- Notices sent home to families in the impacted schools

In the event exigent circumstances make adherence to the above policy infeasible, the Board of Directors may so declare and make a school closure(s) decision following a process consistent only with the minimum requirements of RCW 28A.335.020.

Temporary relocation of students and staff during periods of school building reconstruction or renovation is not considered a school closure and this policy does not apply.

Reference: RCW 28A.335.020