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DAVID T. LEWIS III

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9 **THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
10 **IN AND FOR THE COUNTY OF KITSAP**

11 **JEFFREY DAILY,**

12 **Petitioner,**

13
14 **vs.**

15 **SOUTH KITSAP SCHOOL BOARD,**

16 **Respondent.**

Case No. 22-2-00581 18

**NOTICE OF APPEAL OF THE
SOUTH KITSAP SCHOOL
BOARD'S DECISION AND ACTION**

17
18 **I. NOTICE OF APPEAL**

19 COMES NOW the Petitioner, JEFFREY DAILY, by and through his attorneys
20 SARAH LIPPEK & BRANDT KREITZBERG, whose mailing address is 650 South
21 Orcas Street, Suite 206, Seattle, Washington, 98108, and hereby gives notice that he
22 seeks appeal of the (1) a decision of the Board; pursuant to RCW Chapter 28A.645.
23

24
25 This Appeal is timely filed with the proper court, and timely filed with the Secretary
26 of the Board for South Kitsap School District.
27

28 NOTICE OF APPEAL OF THE SOUTH KITSAP SCHOOL
BOARD'S DECISION AND ACTION - 1

Law Offices of Sarah Lippek PLLC
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Seattle, Washington 98108
(206) 913-5767;
slippeck@protonmail.com

1 RESPECTFULLY SUBMITTED this 15th day of April, 2022:

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3 THE LAW OFFICES OF SARAH LIPPEK PLLC

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11 _____
12 Brandt Kreitzberg WSBA #49629
13 Sarah Lippek, WSBA #46452
14 Attorneys for the Petitioner

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II. PARTIES AND COUNSEL

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2 **III. JURISDICTION AND VENUE**

3 Jurisdiction is conferred upon this Court by RCW 2.08.010 and RCW 28A.645 which
4 grants that “any person... aggrieved by any decision or order of any school official or
5 board,... may appeal the same to the superior court of the county in which the school
6 district... is situated.” *RCW 28A.645.010(1)*.
7

8
9 Venue is proper in Kitsap County Superior court pursuant to RCW 4.12.020 and/or
10 RCW 4.12.025 because the South Kitsap School Board operates in South Kitsap
11 County at 2689 Hoover AVE SE, Port Orchard, WA 98366, and because Petitioner
12 resides in South Kitsap County school district in South Kitsap County, Washington
13 State.
14

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16 **IV. ISSUE**

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18 At issue is the vote taken by the South Kitsap School District Board (hereinafter
19 referred to as the “Board”) on March 16, 2022, to approve and implement rules that
20 govern the actions of the board members and the handling of misconduct complaints
21 in ways are not consistent with the law, in violation of RCW 42.52.200(1);
22

23 Additionally, there is question as to whether the Board acted in violation of RCW
24 42.30.020(3) in their efforts to reach a consensus prior to approval of the rules.
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1 **V. BACKGROUND**

2 Plaintiff Mr. Daily was democratically elected in 2019 as a representative of the
3 people of south Kitsap County to serve as a member of the South Kitsap School Board.
4 He entered office in 2020. Mr. Daily was elected by a majority of votes on a reform
5 platform emphasizing fiscal responsibility and public transparency. Plaintiff Mr.
6 Daily is proud to serve his constituents, and began his service eager to improve the
7 District’s operations. He was unprepared for the level of intense and apparently
8 coordinated resistance he would face.
9
10

11
12 Since the earliest days of his service, Petitioner Mr. Daily has experienced difficulty
13 accessing District financial records; a total lack of traction for his attempts to daylight
14 fiscal and financial decisions; hostile treatment by fellow electeds on the Board; and
15 a near-constant barrage of attacks on his character, personal style, and political
16 opinions.
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18

19
20 Petitioner Mr. Daily has previously attempted to use internal Board processes to
21 address his concerns about potential misconduct by the Board to no avail. Instead of
22 properly addressing Petitioner Mr. Daily’s allegations, the President invoked a non-
23 statutory procedural ‘rule,’¹ found nowhere in any Board policy or applicable law, to
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The Vice President is apparently under the misapprehension that Robert’s Rules of Order have the force of law, and
28 that misconduct complaints can be buried on procedural bases despite that no clear procedure is provided.

1 find Petitioner Mr. Daily ‘out of order,’ thereby burying his complaints. This issue is
2 substantively similar with the issue presented here and has been previously detailed
3 at length in Jeffrey Daily vs. South Kitsap School Board, Cn: 21-2-01233-18, currently
4 outstanding with this court.
5

6 The harm to Mr. Daily and the interests of his constituents has continued since his
7 previous appeal. Although the Board has not voted to censure him as of yet,
8 proceedings of the board that prefigure censure action have continued, in
9 circumstances that do not provide fairness and do not comport with law.
10

11 12 **VI. DEFICIENCY OF UNDERLYING BOARD POLICIES**

13 Following Petitioner Mr. Daily allegations of misconduct in Jeffrey Daily vs. South
14 Kitsap School Board, Cn: 21-2-01233-18, the Board appeared prepared to set aside
15 the rules at issue when it hired the Aspen Group International to train the Board on
16 “Coherent Governance”.² The alleged goal was to craft policies and bylaws for the
17 Board that would be clear and in compliance with current laws. In furtherance of this
18 goal the Board hired the Aspen Group to craft and implement appropriate bylaws
19 that would promote the goals and expectations of the board together with procedures
20 that would govern how the Board would operate and conduct business.
21
22 Unfortunately, after spending approximately \$60k of taxpayer money, the Board
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27 ² “Coherent Governance” is a model for good governance that organizes separate but interrelated parts of governance
28 to allow for effective board governance. *See* www.aspengroup.org.

1 discarded the recommendations of the Aspen group and on March 16, 2022, voted to
2 approve a set of amended governance policies titled “Coherent Governance
3 Policies”³.
4

5
6 *A. Board Members’ Code of Conduct*
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8
9 Petitioner Daily was elected on a platform that included a large focus on bringing
10 transparency to governance. GC-7 Board Members’ Code of Conduct, approved by
11 the Board in a vote on March 16, 2022, threatens censure on Mr. Daily and any
12 other member of the Board who attempts to shine a light on issues being
13 considered by the Board.
14

15
16 In relevant part, the text of the policy is as follows:
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18
19 **“GC-7 – Board Members’ Code of Conduct**

20 The Board and its members will conduct themselves lawfully with
21 integrity and high ethical standards in order to model the
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27 ³ The amendments made by the board to the policies crafted with the Aspen Group were such a departure from the
28 “coherent governance” model promoted by the Aspen Group that the Group requested the Board not refer to the
policies as “Coherent Governance”.

1 behaviors expected of staff and students and to build public
2 confidence and credibility.

3
4 5. When speaking to the press or otherwise publicly sharing
5 personal opinions, members will respect decisions of the Board and
6 will not undermine those decisions;

7
8 6. To build trust among members and to ensure an environment
9 conducive to effective governance, members will:

10 a. focus on issues rather than personalities

11 b. respect decisions of the full Board

12 c. exercise honesty in all written and interpersonal interaction,
13 never intentionally misleading or misinforming each other

14 d. criticize privately, praise publicly

15 e. make every reasonable effort to protect the integrity and
16 promote the positive image of the district and one another

17 f. never embarrass each other or the district”
18
19
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21 While this procedure is described as governing conduct, it does not. Instead, it
22 infringes on the rights of each board member and the constituents who speak
23 through them, to criticize their elected leaders.⁴ The Board cannot, as it does
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27 ⁴ See New York Times Co. v. Sullivan, 376 U.S. 254 (1964), finding that the “central meaning” of the First
28 Amendment is the right of citizens to criticize government and public officials.

1 explicitly, prohibit public criticism. Not only does this impinge on First
2 Amendment rights, but it also infringes on RCW Chapter 42.30 - the Open Public
3 Meetings Act. The public cannot remain informed and remain in control of their
4 devices when that device is only allowing its members “public praise”.

5
6 In addition, the policies state that members can “never” cause embarrassment of
7 each other or the district. The prescribed conduct is impermissibly vague. Rather
8 than describe permissible or impermissible actions, the Board prohibits the
9 causing of subjective feelings. One cannot know what might embarrass another,
10 nor is it clear how or who determines if the district becomes embarrassed.

11
12 As detailed in Jeffrey Daily vs. South Kitsap School Board, Cn: 21-2-01233-18, the
13 board has already used such vague procedures to attempt to silence Petitioner
14 Daily through censure. The rules must immediately be replaced with clear,
15 complete rules that conform with the law.
16

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19 *B. The Process for Addressing Director Violations*

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21 As with the policies describing director conduct, GC-9 Process for Addressing
22 Board Member Violations⁵ was made official on March 16, 2022, following a vote
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27 ⁵ Board Policy GC-9 was previously titled GP-12: Process for addressing director violations but is otherwise
28 identical.

1 for approval by the Board where all members but Petitioner Daily voted to
2 approve.

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5 The full text of the 'Process for Addressing Board Member Violations' (GC-9) is as
6 follows:

7
8
9 **“GC-9 – Process for Addressing Director Violations**

10 The Board, individually and collectively, is committed to full
11 compliance with the provisions of its own policies. In the event of
12 a director’s willful and continuing violation of policy, the Board
13 may seek remedy by the following process:

- 14
- 15 1. Conversation in a private setting between the director and the
16 Board President or other individual member.
 - 17 2. Discussion in a private session between the offending director
18 and the Board (as permitted by law).
 - 19 3. Consider public censure of the offending director of the Board.
 - 20 4. Remove the offending director from any committee or other
21 Board-designated responsibility, as appropriate.
 - 22 5. In cases of nonattendance, declare the seat vacant in
23 accordance with law.”
- 24
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1 While this is described as a ‘process,’ it is not. It is unclear whether the numbered
2 actions are steps of escalation or a menu of options. There is no indication of how
3 a complaint of misconduct or reports of ‘violation’ might reach the Board and what
4 they are meant to do when one does. There is no requirement for a vote, or who
5 might decide what to do, when, or how. Nor is there any hint as to how the Board
6 might evaluate whether a ‘violation’ has occurred or not. There is no process of
7 investigation by a neutral outside party.
8

9
10 This complete lack of clarity opens the door for an unaccountable body that can
11 capriciously expel its own members. Moreover, as censure proceedings potentially
12 implicate the individual property interests of elected officials, they amount to
13 quasi-judicial proceedings and invoke the appearance of fairness doctrine.⁶
14

15 The rules must immediately be replaced with clear, complete rules that conform
16 with the law and that are approved by an ethics board.
17

18 **VII. BOARD ACTION OUTSIDE OPEN PUBLIC MEETINGS**

19
20 Petitioner Daily takes pride in shining light into every action of governance and,
21 through his role of governance on the South Kitsap County School Board, to provide
22 his constituents and the public at large a detailed view of how the proverbial sausage
23 is made. From this position, Mr. Daily entered the board meeting on March 16, 2022
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27 ⁶ Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969); State ex rel. Beam v. Fulwiler, 76 Wn.2d 313,
28 456 P.2d 322 (1969).

1 prepared to openly and fully debate the pros and cons of the proposed amendments
2 to the Board Governance Policies. The plan was for all board members to send in their
3 comments for debate. Instead, only comments by Petitioner Daily and Director Berg
4 were submitted. Rather than a robust discussion, Director Berg quickly and
5 successfully moved to cut off debate. This was done while failing to acknowledge
6 comments provided by Petitioner Daily and with only minimal consideration
7 of Director Berg's.
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9

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11 It is hard to conceive that a decision of such a wide ranging of policies could be agreed
12 upon by the majority without robust discussion before-hand. Such action strongly
13 suggests that the Board is taking action in the form of "deliberations, discussions,
14 considerations, reviews [and/or] evaluations"⁷ with each other outside of regular open
15 meetings in violation of the Open Public Meetings Act (OPMA).⁸ These actions
16 effectively prevent Petitioner Daily from doing that which the people elected him to
17 do, represent their interests.
18
19

20 Additionally, actions by members of the board in this manner violates the core
21 of the OPMA and the insistence in its creation that the public does not give public
22 servants the right to decide what the public has the right to know.⁹ Such actions
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24
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26 ⁷ See RCW 42.30.020(3). "[A]ction is defined broadly to include ""deliberations, discussions, considerations,
reviews, evaluations, and final actions."

27 ⁸ See RCW 42.30.120. An action taken outside a public meeting by members of a legislative body is a violation of the
OPMA.

28 ⁹ See RCW 42.30.010.

1 threaten to deprive the people of control “over the very instruments they have
2 created.”¹⁰ Hiding decision making behind closed doors is a recipe for cronyism,
3 collusion, and a lack of public scrutiny.
4

5 6 VIII. BASES FOR APPEAL

7 Petitioner is entitled to relief pursuant to RCW Chapter 28A.645 because:

- 8 1. The rules of the Board that govern the handling of misconduct complaints are
9 not consistent with the law, in violation of RCW 42.52.200(1).
- 10 2. The rules of the Board that govern the handling of misconduct complaints and
11 the procedures implemented on the basis of those rules, amount to the Board
12 members granting themselves special privileges, in violation of RCW
13 42.23.070(1).
- 14 3. The rules of the Board that govern the handling of misconduct complaints do
15 not appear to have been properly forwarded to or reviewed by the appropriate
16 ethics board before they took effect, in violation of RCW 42.52.200(2).
- 17 4. The Board is taking action outside of public meetings, in violation of RCW
18 42.30.120.

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23 WHEREFORE, Petitioner asks the Court for judgment:
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28 ⁰ *Id.*

- 1
- 2 1. Striking the rules of the Board related to the handling of misconduct
- 3 complaints;
- 4
- 5 2. Striking rules that improperly limit speech and conduct of board members;
- 6
- 7 3. Requiring the South Kitsap School Board to, within 30 days, adopt provisional
- 8 rules consistent with the law on ethics in public service in RCW Chapter
- 9 28A.645; to include a clear, fair, consistent, and transparent procedure by
- 10 which all misconduct complaints will be handled;
- 11
- 12 4. Requiring the South Kitsap School Board to submit the provisional rules for
- 13 evaluation by the appropriate ethics board prior to adoption;
- 14
- 15 5. Requiring the South Kitsap School Board to, at the direction of the appropriate
- 16 board of ethics, revise the provisional rules to align with the law on ethics in
- 17 public service in RCW Chapter 28A.645;
- 18
- 19 6. Requiring the South Kitsap School Board to, within 30 days of the approval of
- 20 the appropriate ethics board, adopt permanently rules for the handling of
- 21 misconduct complaints consistent with the law on ethics in public service in
- 22 RCW Chapter 28A.645;
- 23
- 24 7. Imposing the appropriate penalty to any member of the board found to have
- 25 knowingly participated in an action outside an open public meeting in violation
- 26 of RCW Chapter 42.30;
- 27
- 28 8. Awarding costs and reasonable attorney's fees to Petitioner upon submission
- of a motion for costs and fees and a hearing of that motion;

1 9. Awarding any further relief this Court deems proper.
2

3 RESPECTFULLY SUBMITTED this 15th day of April, 2022:
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5 LAW OFFICES OF SARAH LIPPEK PLLC

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