

Preface:

The following "copyrighted work" of Director John Berg tells us much about his disdain and disrespect for over 40,000 voters in South Kitsap County.

Mr. Berg has lied to us on many occasions (to numerous to list here) since being elected to the South Kitsap School District Board of Directors. He has shown in his writing, press interviews, and at board meetings that he hates parents. He has launched a hostile attack on our community. He doesn't want to hear from us. What other evidence of this do we need? His proposed public comment policy says it all. "He is a feckless and unfaithful public servant". It is clear as the nose on his face, he doesn't champion the kids, and he does not respect their parents or anyone else in our community.

Director Berg wants to mute us all! He already has hit the mute button on one of his fellow board directors during his short tenure as school board president. Director Berg needs to be sent packing. Reading through his outrageous and incorrect interpretations of the Open Public Meetings Act is painful at best. His newest policy proposal now is to change board polices to deny us or constitutional and legislated rights to give oral public comments at school board meetings.

Clearly Director Berg has no qualms with attempting to restrict us from speaking or addressing the school board in public. Clearly, he doesn't want to hear from us. Since Mr. Berg doesn't want to hear from us, then we should no longer need to suffer listening to him. We are going to ignore everything he says until we vote him out of office. We therefore offer him a compromise to the trouble of having to un-elect him in 2023 - we call on him to resign. And we will continue to seek his resignation while preparing what is needed to recall him from office should he fail to resign.

Should he prevail in his efforts, should he manage to convince at least two other board directors to adopt his newly proposed board public comments policy, then they to will face the same community wrath. This elephant doesn't seem to want to leave our living room. So how does the District think the voters will feel about being told to shut up? How will the voters of South Kitsap feel about giving South Kitsap School District more tax dollars when they ask for more levies and bonds? I'd say slim to none if Director Berg gets his policy adopted.

SO WHAT ABOUT THOSE...

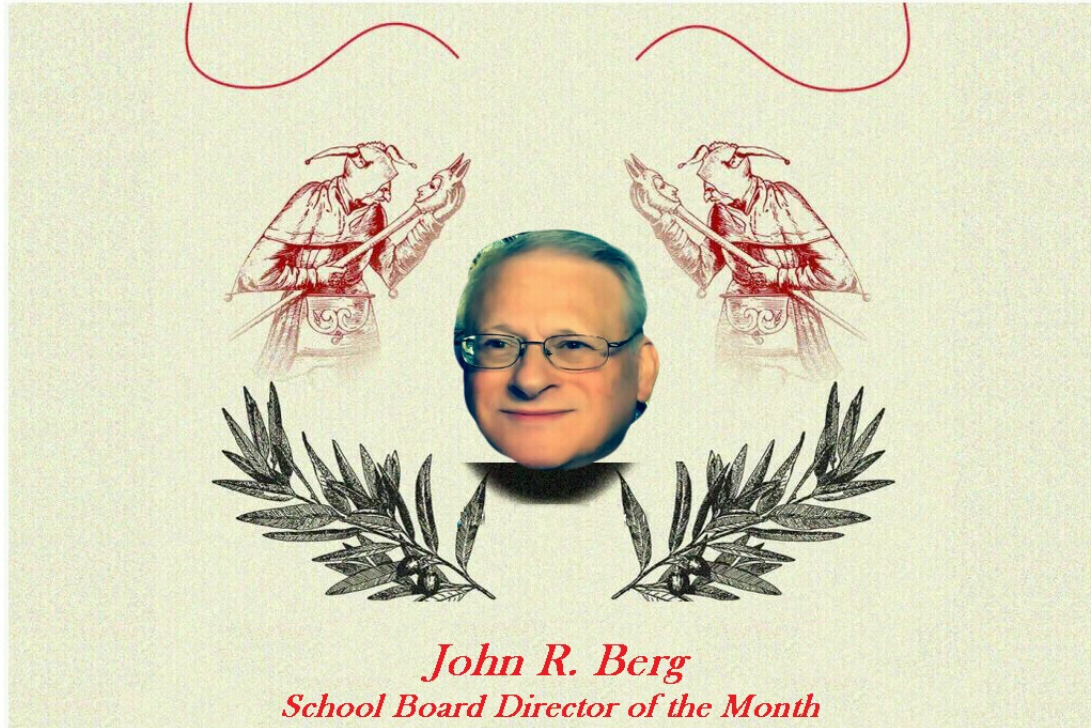
Illegal Public Comment Policy Changes[®]

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Why Open Public Meeting Comments Matter

Find comments disputing John Berg's analysis and opinions as to why we are not entitled to be given opportunities to give the school board feedback in the form of oral public comments at all SKSD Board meetings.

By: Dave Kimble

Posted on:

Citizens Supporting South Kitsap Schools

Find below Mr. Berg's draft of his proposed changes to the public comment sections of the school board's public comment policy. Mr. Berg continues to claim that everything he puts on his private website is copyrighted, further claiming it is his sole work product. Let it be known that what he claims to be his is more often than not others work product. He is quite fond off "siphoning" (actually stealing) much of the information he posts on his private website from official pages and sources of our school district's website, and from

other protected sources. You can't steal others work, then claim it to be your own and profess that it is protected and copyrighted.

What follow is:

John Berg's

"Proposed Public Comment Policy for the Board"

Implementation of ESHB 1329

The March 2022 changes to the Washington State Open Public Meetings Act (OPMA) are detailed [above](#). Those provisions taking effect March 24, 2022 do not appear to require any immediate action or change in policy or procedure by the Board.

¹

Here above, Berg applies his infamous PRETZEL LOGIC standards by stating: "those provisions do not appear to require immediate action or change in, policy or procedure by the board."

Pretzel Logic Definition - Pretzel logic is used to describe inconsistent, illogical thinking that, once scrutinized, doesn't stand up. It is in fact the opposite of a legitimate and consistent application of logic.

Berg continues with his all too familiar pretzel logic methods of trying to convince us that are only his interpretations of the laws, rules, statutes, codes, and regulations that he deems to be correct. In this case, he is offering us his special and entertaining liberal interpretations of what the Open Public Meetings Act means for us. Mr. Berg further states: "Those provisions taking effect June 9, 2022, particularly Section 13 of the bill should be addressed by the Board in May".

The legal Requirement for Public Comment

"The prior OPMA did not address or require public comment at public meetings. It addressed attendance but not public comment".

²

Here above Berg liberally construes and interrupts in his favor, as with every Revised Code of Washington that he recites, that his reading is the 'only' correct reading of Washington State Revised Codes and other legislative work. He reads it the way he wants, thus he is applying his pretzel logic as 'proof' that his reading is more correct than others.

"The term "public comment" appeared nowhere in the prior OPMA except when when defining a governing body it mentions a committee acting on behalf of the governing body taking public testimony or public comment (RCW 42.30.020 (2)). It also mentions "receipt of public testimony" as an example of the governing body's action in RCW 42.30.020(3)".

³

Here again Berg argues that because he could not find the term 'public comment' in the previous version of the OPMA, (except in language about public testimony), he concludes that the 'Act' never envisioned anyone having a right to give public (oral) comments unless it involves public testimony taken by a governing body, (other than Schools District Boards, the House and Senate chambers in Olympia or other legislative bodies he feels the rules do not apply). Just more of Berg's misleading interpretations which he supports with more of his unabashed and purportedly infallible 'pretzel logic'.

"ESHB 1329 does address public comment and requires it only in very specific instances. Section 2 (p. 2, ll. 36-38) states "*For these reasons, even when not required by law, public*

agencies are encouraged to incorporate and accept public comment during their decision-making process." In this section, the legislature even acknowledges that public comment is not required by law. If it were required by law, the legislature would not feel the need to "encourage it". Notice that it encourages public comment "during their decision-making process" and does not even specify during the actual meetings of the governing body, which is only part of the decision-making process. Specifics on public comment that are required are detailed later in Section 13 of the bill".

⁴ Now Mr. Berg 'bootstraps' and attempts to dazzle us all with his pretzel logic skill sets by suggesting that since the legislation (of the OPMA) 'merely encourages public comment' that they have not in fact legislated it as a requirement. Berg cherry picks when it is 'ok' for the OPMA to require public comment, and when he feels he can ignore the Act. He applies his pretzel logic here because the Act does not specifically state that the public must be given an opportunity to have their public comments heard 'by any governing body'. His logic: since it isn't mentioned then it never happened.

Berg has in fact created a false interpretation and narrative to support his own views of what he wants the ACT to prohibit. He is attempting to provide solutions to problems that do not exist in the ACT. He does this because he doesn't believe board directors are, or should be subject to oversight by those who elected them. Why might he be doing this, because this is most likely the highest and most important position he has, or will ever attain in his life? Those desperate for power to prove self-importance clings to it like a life ring. Whether Berg succeeds or not in changing school board public comment polices, we all need to remember who voted yes with Berg, and take appropriate actions in a) - efforts to recall them or b) - voting those who vote yes with Berg in their next school board elections..

One thing that is self-evident: Mr. Berg craves any opportunity to exercise his limited authority, as a school board director. His misguided efforts have added considerably in raising our property taxes with his votes on past levies, voting yes on over-budget pool contracts, other contracts to repair, maintain, and replace the districts dilapidated facilities. Clearly Mr. Berg does not want the public who pays school taxes to make any comments about how the board behaves or functions, much less how they feel about his and other board director's past decisions. Decisions like how this board denied the public of its right to give oral comments to the board on a nearly \$10 million dollar pool rehab project contract. And I really love this part: "If it were required by law, the legislature would not feel the need to "encourage it"

He goes on further to opine: "This weakens the plaintiff's argument in Daily v. SK School Board [2]." (Here Mr. Berg is attempting to excuse the board's recent actions and to convince us that the Board provided sufficient public comment prior to awarding the contract for pool renovations). He further states: "It is **unlikely** that the court will make a legal requirement for that which the legislature sought only to encourage. It is also **unlikely** for the court to apply the requirements of Section 13 to board action that occurred prior to the effective date of the new law."

⁵ Here Mr. Berg attempts to apply what he believes are his fantastic, yet much debated legal prowess skills. He is in fact now acting in a manner that is commonly defined as being a Sea Lawyer. He attempts to move his arguments along in efforts to pre-determine what a judge has not yet ruled upon in the 2nd Daily v SKSD School Board appeal.

Sea Lawyer Definition - Someone who is more likely to dispute an order given to them than act on it. A sea lawyer is one who uses semantics, parsing of words, wordplay and other tricks of language in an attempt to mislead someone as to the truth.

The effect Berg is seeking here when practicing his sea lawyer skill sets is to try convincing us that there is nothing here to see, that the appeal of the school board decision that awarded the pool contract is a done deal. His over reach in his efforts to opine on how the OPMA weakens the pending 2nd appeal of the board decision are just more of his sea lawyer antics. Part of that court

decision will address how the board denied our rights to comment on the SKSD pool repair contract. That case also addresses how the board is currently violating many elements of the OPMA. As you may recall, this board voted 4 -1 to accept the SKSD pool contract that had 'blossomed' in cost from \$4.1 million to a bit over \$10 million. These increases occurred with a matter of months. At this 'no public comment meeting' the school board awarded the SKSD Community Pool 'rehabilitation contract' to the lowest bidder. That contractor is Christenson and Sons.

What is most disappointing in that contract award decision by the school board is that Christenson and Sons is the same contractor who ran the remodel project for the SKHS Science Labs into the ground. They caused a whopping \$500,000 cost overrun on the original \$1,000,000.00 contract awarded by our school board. Berg voted yes, Daily voted no on that prior contract. The other board directors are now long gone.

The cost overrun excuse was explained by then Board Chair Eric Gattenby and Vice Chair John Berg who both stated that 'other problems' were found when the 'cracked open' the floors to do the work. They claimed problems with plumbing and electrical were discovered. At the same meeting when the board awarded the pool contractor to Christenson and Sons, the District Assistant Superintendent (Jennifer Farmer) laid on the praise regarding what a great contractor it was they elected to repair the community pool. What a fantastic job they did on the SKHS Science Labs. In fact, Ms. Farmer took responsibility for the District, for this contractor and stated it was not the fault of the contractor for the \$500,000 cost overruns. I wonder, just how many contractors in private life get a 'get out of contract jail card' for going over budget? We should not be surprised if the current \$10 million pool contract doubles in cost once the contractor 'crack open the pool floor'.

Moving along here with Mr. Berg's 'stirring legal arguments ' as examples of his self assessments of his consider "legal prowess" as they relate to the Washington State Open Public Meetings Act.

When to Have Public Comment

Section 3(1) (p. 12, ll. 1-6) states:

Except in an emergency situation, the governing body of a public agency shall provide an opportunity at or before every regular meeting at which final action is taken for public comment. The public comment required under this section may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting."

Notice that the public comment can be before or during the meeting and it can be taken in written form or orally. The law uses the word "or" rather than "and". Under this statute, the Board could permit only written public comment to be submitted before the meeting and the public comment requirements for "during the decision-making process" would be satisfied.

⁶ And here goes Berg again. Saying the board could permit only written public comment before a meeting. Interpreting what he wants from the simple word "or" to mean that the board doesn't have to take oral comments. My advice to Berg: "If you and two other board members choose to disallow oral or written public comment at board meetings, you do so at your collective and individual peril. Don't bank on getting even one more levy passed if you pursue John Berg's policy changes. So Berg thinks because we can call, email, write snail mail, or visit out of the confines of a public school board meeting that those methods suffice for the board to hear our concerns, for us to give public comments to the board? All I see here are more examples of Berg's pretzel logic evidenced by his very poor and unskilled sea lawyer tactics.

The difference between attend, listen, participate, and speak

Section 5 (pp. 3-4) repeatedly uses the term "listen" in discussing the public's participation rights in the public meeting. In fact, it even cites "broadcast by the public agency on a locally available cable television station" (p. 4, ll. 3-4) as an example of meeting the requirements to allow the public to listen. A television broadcast does not permit the public to speak at the meeting. The Board's live streaming of the meeting can be in listen-only mode.

⁷ Here we go now with listen, but don't speak as being sufficient to garner public comment and opinions on the behaviors and decisions being made by our school board. He pulls out of his rear-end the analogy that we can't speak during broadcasts being received over our television, of course other than yelling at the 'boob tube'. He intonates, as did Superintendent Winter that the board doesn't have to record board meetings, or allow oral public comments. He tries to educate us here; again, that Zoom can be by active or passive participation by the Zoom audience. After all, it is just the "push of a button" and will be silent! No wonder the board is not eager to hold in person meetings. Pretty hard to shut up someone who is called upon to give comments. Look how they freaked out with the mask issue at the last in person board meeting.

SPOILER: The OPMA prohibits any conditions precedent to attending public meetings, such as signing in, filling out a form, or whatever. Thus anyone can attend a meeting and listen anonymously without the need to identify themselves.

Berg shares:

Anyone is also free to write to their elected officials anonymously and this is not addressed by the OPMA.

Speaking to the Board in a public meeting is quite different from merely attending and listening. Nearly all public agencies in Washington State require those who wish to address the governing body in the public comment portions of their meetings to identify themselves, and many require pre-registration before the meeting. (This policy and practice is currently being challenged in [Daily v. SK School Board \[2\]](#). See [Notice of Appeal](#), pp. 3-5.)

The Washington State School Directors' Association ([WSSDA](#)) has a Model Policy #1400, after which many school districts pattern their own policies. Regarding public attendance and comment at board meetings, that policy states:

The board may require those who wish to speak (but not all attendees) to sign in so that the board has a tally of individuals who wish to speak and can call them forward. When called forward, individuals will identify themselves and proceed to make comments within the time limits established by the board.

⁸ Here Berg is again offering us his own interpretations of explaining that attending board meetings on Zoom is not participation. Nowhere in the ACT does it state boards can request attendee info so that they can gauge how many speakers they might have. This is again another non-binding WSSDA model rule for those districts that subscribe to their services.

Just to clarify here, we know that we don't have to pre-register to attend Zoom meetings. But if we want to participate we must pre-register with our personal info and also send it through a special email address prior to the meeting. So this pre-registration is going away per legislative changes. It was always disallowed per the controlling RCW but SKSD Board ignored the law on this.

SPOILER: With in-person meetings I was told by our SKSD Superintendent that they have allowed people at in person meetings to not identify themselves, or allowed them to call themselves 'Joe or Jane Blow' or what have you precedent to 'being permitted to speak' at school board meetings. In fact, Mr. Berg has made a point on several occasions stating to me that the school board has never denied anyone an opportunity to give public comments at board meetings. Now, Berg wants to disallow all public comments at in person meetings and zoom meetings with the exception of 'granting' the public one meeting per quarter to give public comments to the board... maybe... Berg cites a WSSDA model policy as if it has the strength and precedent of law as per the OPMA. WSSDA is a part of the problem here. They charge big dues to school district to belong to their group. They publish model rules that do not have the legislative power of the laws within the OPMA yet school boards want us (including our of course) to believe that WSSDA IS THE LAW!

Berg cites a policy that is not law, that suggests district 'may' ask participants at board meetings to sign in, give their personal info, etc. Note, this is not the law and any district who denies any person attending board meetings (in person or on Zoom) to identify themselves is in violation of State laws. The purpose of this unlawful requirement is: so the district has a "tally" of how many people want to speak. Really? Like SKSD or other districts have such a robust turn out of those constituents at board meetings who want to speak that they need to keep a tally. Certainly not a reasonable and now not a lawful condition of attendance or for participation. As a bonus for us, Berg slips in this:

How very accommodating and self-serving for Berg to offer us this opportunity to remain anonymous. He fails to show us where this is any part of the "conditions not necessary to attendance" as stipulated in the controlling RCW. What a bonus Mr. Berg is giving us here!

When Oral Public Comment is Required Remotely

ESHB 1329 Section 13(2) reads:

Upon the request of any individual who will have difficulty attending a meeting of the governing body of a public agency **by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult**, the governing body shall, when feasible, provide an opportunity for that individual to provide oral comment at the meeting remotely if oral comment from other members of the public will be accepted at the meeting. *(p. 12, ll. 10-16)*

Notice it says, "if oral comment from other members of the public will be accepted at the meeting." This presupposes that oral comment from other members of the public may not even be accepted at the meeting.

Berg is also wringing his hands how requests for accommodations that might not be physical are essentially an abuse of the new language in the changes made to OPMA. This is what Berg states further on: **"Difficulty" is not defined in the bill and under the OPMA's required liberal interpretation, nearly any difficulty would qualify.**

⁹ What is it with Berg? Is he Anti-ADA or what? Does he not recognize disability is not always visible? Does he not realize or understand how the ADA works? This will be interesting to see what happens when he or the others refuse to allow someone claiming they need to attend and comment on Zoom since they cannot attend and comment in person. Lawsuits will certainly arise. We can only hope that Berg is Johnny left foot and the other directors are Johnny right footers. And then Mr. Berg comes to this conclusion when practicing his 'most remarkable' sea lawyer skills:

'It would therefore be quite legal for the Board to accept no public comment during the meetings, either written or oral, and accept only written public comments before the

meeting, except for specific public hearings required by law, such as before adopting the annual agenda".

Public Comment Practice Prior to OPMA changes

[Click here](#) for a discussion of Public Comment at Board meetings prior to the changes in the OPMA.

Director Berg's Proposal

Director Berg proposes four changes to the Board's Public Comment Policy:

1. A town hall type meeting, similar to that held on [January 26, 2022](#) will be scheduled at least quarterly. This will provide an opportunity for the public to address the Board orally both remotely or in person on a variety of topic.

¹⁰ Here Berg is playing around by stating public comment will be taken but only at town hall settings, if they even hold another town hall. Offering this is worthless since we know how many decisions that were made by the board that we were not given the opportunity to comment on in real time will occur before a town hall meeting is held.

2. The public will be encouraged to share their public comment with the Board *prior to its meetings*. This can be by email to the individual Board members or to the entire Board, or through individual conversations with board members, by phone, in person, email, or whatever.

3. During the semi-monthly Board meetings, the Board members will take time to share and discuss public comment that they have received. This will provide the public with the feedback from the Board in response to their public comment that was not provided in the current public comment portions of meetings.

4. Oral public comment will not be accepted during normal semi-monthly meetings because adequate opportunity will have been provided under items 1-3 above. Under Section 13 (2) of ESHB 1329, if any oral public comment is allowed during a board meeting, the Board would be required to accept remote oral comment from anyone who claimed difficulty in attending the meeting physically. **"Difficulty" is not defined in the bill and under the OPMA's required liberal interpretation, nearly any difficulty would qualify.**

The Current Board's Public Comment Policy in GC-12:

The board recognizes the value of public comment on educational issues and the importance of involving members of the public in its meetings. In order to permit fair and orderly expression of such comment, the board will provide a period at the beginning and/or the end of the meeting during which visitors may present to the board. Unless the entire board meeting is conducted electronically, oral public comment will be received only in person.

The board will also allow individuals to express an opinion prior to board action on agenda items that the board determines require or will benefit from public comment. Individuals wishing to be heard by the board will first be recognized by the chair/president.

Individuals, after identifying themselves, will proceed to make comments within the time limits established by the board. An individual will be allowed three minutes and a

representative of a group five minutes. Only district stakeholders will generally be allowed to address the board. The chair/president may interrupt or terminate any statement when it exceeds the time limits, or is vulgar, obscene or grossly disruptive to the board process. Any restriction imposed must be viewpoint neutral. The board as a whole has the final decision in determining the appropriateness of all such rulings.

¹¹ By Berg requiring individuals to identify themselves to speak at meetings he is in violation of the OPMA. Identifying oneself in order to speak or attend meetings is not a requisite within the OPMA. Berg's is promoting an illegal requirement as a condition of attendance as well as participation at school board meetings.

Berg goes on:

Public comment is an opportunity to direct comments to the board and is not intended to permit interrogation of the board or its members or to engage in a dialogue. Any specific questions raised in the public comment will be addressed to the chair/president, who will typically refer the question to the superintendent for a detailed response to the individual at a later time. The superintendent will then also report the response to the board at a subsequent public meeting.

¹² This is the same stance that is not law IAW with the 'ACT' that all school boards cling to. They fear engaging with the constituents both in person and on zoom. In my opinion, this entire school board needs to be replaced with board directors that are not afraid for their constituents and a board that does not play their parts as honest brokers for the school district.

Director Berg's Proposed Public Comment Policy in GC-12:

The board recognizes the value of public input on educational issues and the importance of involving members of the public in the board's decision-making processes. Therefore, the board encourages public comment during its decision-making processes. Members of the public are encouraged to communicate with board members outside of board meetings, whether in person, in writing, orally, or electronically.

In order to permit fair and orderly expression of public comment to board, the board will devote the majority of at least one meeting quarterly to allow for oral public comment at a board meeting. After identifying themselves and being recognized by the chair, any individual may address the board in a civil manner for up to three minutes. An individual's allotted time may not be transferred to another. The president may interrupt or terminate any statement when it exceeds the time limits, or is vulgar, obscene or grossly disruptive to the board process. The board as a whole has the final decision in determining the appropriateness of all such rulings. The board may limit all or a part of the public comment at a meeting to specific topics. Public comment may be received in person, if the meeting is held in person at a fixed location, or orally at an in person meeting or at a remote meeting. Any restriction imposed must be viewpoint neutral.

Unless the board designates otherwise for a specific meeting, public comment at these quarterly meetings is an opportunity to direct comments to the board and is not intended to permit interrogation of the board or its members nor to engage in a dialogue and any specific questions raised in the public comment will be addressed to the president, who will typically refer the question to the superintendent for a detailed response to the individual at a later time.

At board business meetings, those typically semi-monthly, public comment will be received only in writing before the meeting. Such public comment will be delivered to the superintendent's office by a stated deadline before the meeting and will then be shared with

the board members prior to the meeting. During a designated portion of the board meeting, board members are encouraged to share and discuss public comment that has been received by them individually or submitted to the entire board.

The board may solicit oral testimony or reports from staff or other specific individuals during its meetings, but these will not be considered to be public comment.
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Egg-Suckin' Dog.

**You're always hangin' around
but you'd better stay out of my hen house
you dirty old egg-suckin' hound.**

Johnny Cash