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7			E STATE OF WASHINGTON COUNTY
8	IN THE MAT	TTER OF THE RECALL OF:	Case No.
10	TIM CLARK Director (Dis	, Kent School District Board trict 5)	PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT
11			SCHOOL DISTRICT NO. 415
12	то:	RESPONDENT TIM CLARK	
13	AND TO:	KING COUNTY ELECTIONS KING COUNTY PROSECUTIONS	
14		KING COUNTY SUPERIOR O	COURT
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the Board will exercise the full authority granted to it by the laws of the state. Its legal powers,

duties, and responsibilities are derived from state statute and regulation. Sources such as the

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<sup>1</sup> See MRSC: What is a Special Purpose District.
<sup>2</sup> See MRSC: Knowing the Territory at p. 1.

<sup>3</sup> See WSSDA: Serving on Your Local School Board at p. 9.

school code (<u>Title 28A RCW</u>), *attorney general's opinions* and regulations of the State Board of Education (<u>Title 180 WAC</u>), and the State Superintendent of Public Instruction (<u>Title 392 WAC</u>) delineate the legal powers, duties, and responsibilities of the Board." Emphasis added.

# B. Special Purpose Districts (Public School Districts) in Washington State have Limited Powers.

A school district is a "special purpose district" in the State of Washington. <u>RCW</u> 36.96.010. School districts have autonomous governing boards—their funding depends on approval by the legislative body that created the district. Legislation is passed in the name of the district, and resolutions and ordinances are retained separate from the legislative body of the county, city, or town.<sup>1</sup>

Special purpose districts are created for a particular purpose and their powers are limited to those areas within their jurisdiction—exercising only powers delegated to them or implied by the constitution and the laws of the state.<sup>2</sup>

School boards were created by the Washington Legislature to formulate policies for the operation of school districts. School boards are agents of the state, charged with governance functions delegated to them by the Legislature. School boards have three types of power (1) that which is enumerated by the Legislature; (2) that which is implied to carry out what the Legislature authorizes; and (3) that which improves public school programs or improves the administration of school districts.<sup>3</sup>

# C. Governing Body; Acts on Behalf of the Governing Body; Open Public Meetings Act.

The KSD Board is a governing body of a public agency as defined by <u>RCW 42.30.020(2)</u> and therefore subject to the Open Public Meetings Act and Public Records Act.

RCW 42.30.020 includes the definitions for the terms Public Agency, Subagency, Governing Body, Action, and Meeting. A governing body "means the multimember board,

commission, *committee*, council, or other policy or rule-making body of a public agency, *or any committee thereof when the committee acts on behalf of the governing body*, conducts hearings, or takes testimony or public comment.<sup>4</sup>

Committees of the KSD Board cannot include more than two Board members.

Committees that contain three or more Board members become a "sub agency" of the public agency, when the committee "acts on behalf of" the governing body. Special purpose districts (school districts) in Washington State are explicitly not allowed to have committees containing a majority (a quorum) of the Board—a quorum of Board members on a committee causes a second governing body of the District to be created, when the committee "acts" on behalf of the Board. The definition of "action" includes more than "final actions" of the Board.

Per <u>RCW 42.30.020(3)</u>, "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, <u>and final actions</u>. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance. Emphasis added.

The OPMA applies to any "subagency" of a city, county, or special purpose district. *Most special purpose district governing bodies do not have authority to create such subagencies.*Under the definition of "public agency" in RCW 42.30.020(1)(c), *the subagency must be created by a legislative act of the body, such as an ordinance or resolution.* 

# D. Governing Bodies of Public Agencies are Subject to the Open Public Meetings Act and the Public Records Act.

"The Legislature finds that the rights of citizens to observe the actions of their public officials and to have timely access to public records are the underpinnings of democracy and are essential for the meaningful citizen participation in the democratic process. *All too often*,

<sup>&</sup>lt;sup>4</sup> See also MRSC: <u>The Open Public Meetings Act—How it Applies to Washington Cities, Counties, and Special</u> Purpose Districts at p. 2 and 3. Emphasis added.

<sup>&</sup>lt;sup>5</sup> See KSD <u>BP 1240, BP 4110, RCW 28A.343.390, AGO 1986 No. 16, AGO 2006 No. 6.</u>

however, violations of the requirements of the public records act and the open public meetings act by public officials and agencies result in citizens being denied this important information and materials to which they are legally entitled. ... Also, whether due to error or ignorance, violations of the public records act and open public meetings act are very costly for state and local governments, both in terms of litigation expenses and administrative costs." ESB 5964. Emphasis added.

#### E. School Boards Exist to Aid in the Conduct of the People's Business and Board Members Have a Duty to Discharge Their Offices in the Public's Best Interest.

Taxpayers living within the boundaries of Kent School District No. 415 provide the Public funds necessary for the KSD's operation and maintenance, and the electorate selects Board Members from the community through an election process for the proper oversight of the KSD's use of those Public funds.<sup>6</sup>

Per RCW 42.30.010—Legislative declaration: "The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created. For these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process." *Id.* (emphasis added).<sup>7</sup>

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<sup>&</sup>lt;sup>6</sup> See RCW 28A.150.010; 28A.150.020; 28A.150.070; 28A.150.230; 42.30.010; 42.56.030.

<sup>&</sup>lt;sup>7</sup> See also RCW 42.56.030 and AGO 1971 No. 33.

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**Board Member Oath of Office.** 

According to statutory provision, each newly elected, re-elected, or appointed director will take an oath or affirmation to support the constitutions of the United States and the State of Washington and to promote the interests of education and to faithfully discharge the duties of their office to the best of their ability. A school district officer or notary public authorized to administer oaths must certify to this oath and the signature of the member. After completion, the oath of office will be filed with the county auditor.<sup>8</sup>

#### 1. Tim Clark's Oath of Office.

KSD Board Director Tim Clark was elected to his Board position (District 4) in November 2021, with his oath of office administered at a regular meeting of the Board on December 8, 2021. Director Clark serves as the Board's legislative representative.

#### G. Duties of Individual Board Members.

The authority of individual board members is limited to participating in actions taken by the board as a whole when legally in session. KSD BP 1220.

Board members will not assume responsibilities of administrators or other staff members. The board or staff will not be bound in any way by any action taken or statement made by any individual board member except when such statement or action is pursuant to specific instructions and official action taken by the board. KSD BP 1220.

#### H. Duties of the Board's Legislative Representative.

The legislative representative serves as the Board's liaison with the Washington State School Directors' Association (WSSDA) on legislative issues and serves a period of two years. The legislative representative represents the Board at WSSDA's General Assembly, conveying local views and concerns to that body. When appropriate, the legislative representative obtains the Board's support for a legislative proposal to be submitted to the Assembly and supporting it at the Assembly. The legislative representative is tasked with monitoring proposed school

<sup>&</sup>lt;sup>8</sup> See RCW 28A.343.360, 28A.343.370, and KSD BP 1111.

<sup>&</sup>lt;sup>9</sup> See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C8W3R207EA7E.

legislation and providing legislative updates periodically at Board meetings. Additionally, the legislative representative builds relationships with local policy makers regarding WSSDA's legislative positions and priorities. <u>KSD BP 1220</u>

# I. Expectations of Elected Representatives; Fiduciary Duty to the Public.

KSD Board members take an oath of office to support the Constitutions of the United States and Washington State. KSD Board Directors commit to upholding the oath of office and to ethical behavior. Ethical behavior is an individual responsibility. KSD BP 1815.

The Board's independently elected officials recognize and accept the responsibility of the role and personal authority to act only within the KSD's structure... and commit to ensuring the community is accurately informed about the Kent School District via regular Kent School District communications platforms, and that the Kent School District staff understands and values the community perspective regarding education in the Kent School District. KSD BP 1815.

Public policy in the State of Washington provides that "the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings; ... [t]hat our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people; ... [t]hat public confidence in government at all levels is essential and must be promoted by all possible means; ... [t]hat public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions; ... [t]hat, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society. The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the ... financial affairs of elected officials and candidates, and full access

to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to ensure that the information disclosed will not be misused for arbitrary and capricious purposes and to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed." RCW 42.17A.001 (emphasis added).

Per RCW 42.52.900, "the government [the KSD] derives its power from the people." The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should. Emphasis added.

Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public's best interest. . . . "[I]n a democracy, citizens elect public officials to act for the common good. When official action is corrupted by secret bribes or kickbacks, the essence of the political contract is violated." <sup>10</sup>

"[I]n a democracy, citizens elect public officials to act for the common good." It may well be that merely by virtue of being public officials the defendants inherently owed the public a fiduciary duty to discharge their offices in the public's best interest." 12 13

<sup>&</sup>lt;sup>10</sup> See United States v. DeVegter, 198 F.3d 1324, 1328 (11th Cir. 1999) (first citing United States v. Lopez-Lukis, 102 F.3d 1164, 1169 (11th Cir. 1997); then quoting United States v. Jain, 93 F.3d 436, (11th Cir. 1996)). See also Nelson, 712 F.3d at 509 (quoting DeVegter with approval).

<sup>&</sup>lt;sup>11</sup> See United States v. Langford, 647 F.3d 1309, 1321 (11th Cir. 2011) (quoting DeVegter, 198 F.3d at 1328)). <sup>12</sup> See United States v. Sorich, 523 F.3d 702, 712 (7th Cir. 2008) (citing DeVegter, 198 F.3d at 1328).

<sup>&</sup>lt;sup>13</sup> Quoting "The Fiduciary Obligations of Public Officials" by Vincent R. Johnson. Emphasis added. *See also* RCW 28A.150.230; 42.17A.001.

A public official's breach of fiduciary duties owed to the public gives all citizens a right to complain. In the American political system, that right to voice disapproval is both cherished and frequently exercised.<sup>20</sup> Indeed, the American system of government, and its "exceptional"<sup>21</sup> commitment to free speech, is designed so that the discussion of the conduct of public officials

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<sup>&</sup>lt;sup>14</sup> See PAINTER, supra note 10, at 3 ("[D]espite ambiguities . . . the general principle is that officials in all branches of government owe a fiduciary obligation 'to the public,' whatever the relevant definition of the public is in a particular instance."). Some cases have held that governmental entities (as distinguished from public officials) have fiduciary duties to the public in general. For example, in holding that state parks and forests had to be managed in a manner consistent with Pennsylvania trust law, the Supreme Court of Pennsylvania noted that Pennsylvania had a "constitutionally imposed fiduciary duty to manage the corpus of the environmental public trust for the benefit of the people to accomplish its purpose—conserving and maintaining the corpus by, inter alia, preventing and remedying the degradation, diminution and depletion of our public natural resources." Pa. Envtl. Def. Found. v. Commonwealth, 161 A.3.d 911, 938 (Pa. 2017) (citing Robinson Twp. v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013)).

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<sup>&</sup>lt;sup>15</sup> See United States v. Lopez-Lukis, 102 F.3d 1164, 1169 (11th Cir. 1997) ("Elected officials generally owe a fiduciary duty to the electorate." (citing Shushan v. United States, 117 F.2d 110, 115 (5th Cir. 1941))); see also Castro v. United States, 248 F. Supp. 2d 1170, 1189 (S.D. Fla. 2003) (quoting Lopez-Lukis).

<sup>16</sup> See Exec. Order No. 12,674, 54 Fed. Reg. 15,159 (Apr. 12, 1989) ("Public service is a public trust, requiring

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employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.").

17 Cf. United States v. DeVegter, 198 F 3d 1324, 1328 (11th Cir. 1999) (noting "the duty of loyalty and fidelity to purpose required of public officials," and observing that "such a strict duty of loyalty ordinarily is not part of private sector relationships").

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<sup>&</sup>lt;sup>18</sup> United States v. Sawyer, 85 F.3d 713, 723 (1st Cir. 1996) (quoting United States v. Silvano, 812 F.2d 754, 759 (1st Cir. 1987)).

19 Id. at 732 (alteration in original) (quoting Silvano, 812 F.2d at 758).

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<sup>&</sup>lt;sup>20</sup> Cf. Vincent R. Johnson, Comparative Defamation Law: England and the United States, 24 U. MIAMI INTL. & COMP. L. REV. 1, 21–22 (2016) [hereinafter Johnson, Comparative Defamation Law] ("In contrast to England, the United States has decided—in a wide range of cases involving matters of public interest—that free expression and vigorous public debate are often more important than compensating plaintiffs for harm caused by defamatory falsehood.... In the field of libel and slander, '[d]ozens of rules conspire to favor defamation defendants...

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<sup>[</sup>which] means that victims of false and defamatory statements are often left without effective remedies." (quoting VINCENT R. JOHNSON, ADVANCED TORT LAW: A PROBLEM APPROACH 163 (2d ed. 2014))). <sup>21</sup> Kyu Ho Youm, Liberalizing British Defamation Law: A Case of Importing the First Amendment?, 13 COMM. L. & POL'Y 415, 415 (2008) ("It is hardly an exaggeration to describe the United States as exceptional in its commitment to free speech as a right.").

1	will be "uninhibited, robust, and wide-open." 22 Americans are right to protest public
2	corruption—the most venal form of official breach of fiduciary duty—because corrupt
3	practices are both a violation of human rights <sup>23</sup> and a threat to a society's economic welfare. <sup>24</sup>
4	However, as Professor Richard Painter correctly states: "Fiduciary law does not provide
5	citizens with broad equitable remedies against government officials for breach of trust;
6	citizens can vote a politician out of office[] but cannot sue for breach of fiduciary duty."25
7	(Emphasis added.)
8	A public official who breaches his or her fiduciary duties is sometimes subject to criminal
9	prosecution. <sup>26</sup> However, even if a public official is found guilty, he or she may be effectively
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11	22 See N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964) (explaining the "profound national commitment to the
12	principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials" (citing
13	Terminiello v. Chicago, 337 U.S. 1, 4 (1949); De Jonge v. Oregon, 299 U.S. 353, 365 (1937)); see also Johnson, Comparative Defamation Law, supra note 80, at 54 ("[T]he American imposition of the burden of proof and heightened culpability requirements on the plaintiff is more likely than the English public interest defense to invite
14	robust discussion of matters of public interest and to deny remedies for defamatory falsehood to those injured by such discussions.").
15	<sup>23</sup> See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at art. 28 (Dec. 10, 1948) ("Everyone is entitled to a social and international order in which the [civil, political, economic, social, and cultural] rights and freedoms set forth in this Declaration can be fully realized."); C. Raj Kumar, Corruption in India: A Violation of
16	Human Rights, 49 U.C. DAVIS L. REV. 742, 790 (2015) ("The problem of corruption when examined as a human rights issue produces an entirely new and important approach to ensure that good governance remains the goal of
17	public administration ").  24 Cf. NIALL FERGUSON, EMPIRE: THE RISE AND DEMISE OF THE BRITISH WORLD ORDER AND THE
18	LESSON FOR GLOBAL POWER 307 (2002) ("The economic historian David Landes recently drew up a list of measures which 'the ideal growth-and-development government would adopt [which included] 'secure rights of personal liberty against both the abuses of tyranny crime and corruption."").
19	<sup>25</sup> PAINTER, supra note 10, at 3. In this regard, the fiduciary rules applicable to public officials share some similarities to the public duty rule in tort law. See VINCENT R. JOHNSON, MASTERING TORTS: A
20	STUDENT'S GUIDE TO THE LAW OF TORTS 165 (6th ed. 2018) ("Some states hold, with regard to police and fire protection, that the government owes a duty to the public at large, but to no particular individual. Therefore, a glaim for demagns cannot normally be based on the government's negligible to provide such assistance.")
21	claim for damages cannot normally be based on the government's negligent failure to provide such assistance.").  However, occasionally one finds a piece of ethics legislation which invites courts to create a private right of action:  One such provision can be found in the City of San Antonio (Texas) Code of Ethics. When the code was drafted,
22	reformers were faced with a dilemma concerning enforcement mechanisms. Cities, even large cities, have limited powers. They cannot create new tort causes of action. However, to create the possibility that the code's conflict of
23	interest and other rules could be backed up by the imposition of civil liability, the drafters included this language in the section on sanctions (sec. 2-87(f)(2)): This code of ethics has been enacted to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these
24	provisions. It is the intent of the City that this ethics code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such
25	forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics or any other law. Suppose that a business bidding on a city contract violates the ethics rules and there needs to be a
26	new round of proposals. Under this language, the city and the bidders may then be able to sue the violator to recover the costs they incurred in conducting or participating in the new bidding process. JOHNSON & LIU, supra note 23, at 349–50.
27	<sup>26</sup> See United States v. DeVegter, 198 F.3d 1324, 1328 (11th Cir. 1999) (discussing liability for honest services fraud back on acceptance of kickbacks).

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insulated from the burdens of liability by laws which indemnify officials for the costs of a legal defense and an adverse judgment<sup>27</sup> or settlement."

#### J. WSSDA Membership, Training, and Policy Guidance.

All public school board members are WSSDA "members" by default. Per <u>RCW</u> 28A.345.020, "The membership of the school directors' association shall comprise the members of the boards of directors of the school districts of the state."

KSD Board members receive training, attend WSSDA conferences, obtain templates of Board policies and legal guidance for same, and have access to a variety of other school board leadership resources from WSSDA, as part of their position on a school board within Washington State.

#### K. Recall of Elected Officials.

An elected official may be recalled for misfeasance, malfeasance, or violation of the oath of office. Const. art. I, §§ 33–34; RCW 29A.56.110. In recall proceedings, courts ensure that public officials are not subject to frivolous or unsubstantiated charges by confirming that the charges are legally and factually sufficient before placing the charges before the voters. RCW 29A.56.140; In re Recall of Lindquist, 172 Wash.2d 120, 131–32, 258 P.3d 9 (2011). Courts do not, however, evaluate the truthfulness of the charges. *Id.* It is up to the voters to determine whether the charges are true and, if so, whether they in fact justify recalling the official. Courts therefore take all factual allegations as true. *In re Recall of Boldt*, 187 Wn.2d 542, 549, 386 P.3d 1104 (2017).

A charge is factually sufficient where the alleged facts, taken as a whole, "identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance, malfeasance, or a violation of the oath of office." *Id.* at 548 (quoting *Chandler v. Otto*, 103 Wn.2d 268, 274, 693, P.2d 71 (1984)). A

<sup>&</sup>lt;sup>27</sup> See Steve Lopez, Coastal Officials Let Off the Hook, L.A. TIMES, Sept. 14, 2018, 2018 WLNR 28210878 (reporting "five current and former California coastal commissioners were found guilty... of breaking rules designed to ensure fairness and transparency" but were indemnified for roughly a million dollars in fines and attorneys' fees).

1	charge is legally sufficient if it 'state[s] with specificity substantial conduct clearly amounting to
2	misfeasance, malfeasance or violation of oath of office." <i>Id.</i> at 549 (alteration in original)
3	(quoting <i>Chandler</i> , 103 Wn.2d at 274). "Misfeasance," "malfeasance," and "violation of the oath
4	of office" are statutorily defined:
5	(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
6 7	(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
8	(b) Additionally, "malfeasance" in office means the commission of an unlawful act;
9	(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.
11	RCW 29A.56.110.
12	An official may be recalled for execution of discretionary acts "if the execution of that
13	discretion is done 'in a manifestly unreasonable manner'" which "may be shown by
14	demonstrating discretion was exercised for untenable grounds or for untenable reasons."28
15	L. Bad Faith Acts and Violations of Civil Rights Not Covered by Director & Officer Insurance Coverage.
<ul><li>16</li><li>17</li><li>18</li></ul>	1. <u>April 5, 2023 Special Meeting</u> —Legal Update from Paul Brachvogel "and Special Guests" (Names and Presentation Topics Not Provided to Public in Advance).
19	Board President Meghin Margel was absent for the April 5, 2023 special meeting of the
20	KSD Board, so then-Vice President Awale Farah presided over the meeting. Board Directors
21	Leslie Hamada, Joe Bento, and Tim Clark were present at the meeting. The notice and agenda
22	item published for the Public in advance of the April 5, 2023 special meeting stated:
23	"AGENDA ITEM: Mr. Paul Brachvogel, General Counsel and special guests, will
24	make a legal review presentation to the Board."29
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26 27	<sup>28</sup> In re Recall of Inslee, 194 Wn.2d 563, 572, 451 P.3d 305 (2019) (internal quotation marks omitted) (quoting In re Recall of Bolt, 177 Wn2d 168, 174, 298 P.3d 710 (2013)). [Quoting In re Recall of Jenny Durkan, No. 98897-8 (emphasis added).]
· 1	<sup>29</sup> See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CQFLQ9579671. Emphasis added.

RECALL PETITIONERS
GRETA NELSON
MICHELE BETTINGER
LORI WAIGHT

During the meeting, then-General Counsel Paul Brachvogel introduced "special guests" P. Stephen DiJulio of Foster Garvey PC (outside legal counsel for KSD) and Kris Lawerence of Propel Insurance (KSD's insurance broker) to the KSD Board.<sup>30</sup> The named attendance of Mr. DiJulio and Ms. Lawrence, and the topics of and materials for their respective presentations to the Board, were hidden from the Public on the Agenda. The meeting Minutes listed their names, but not the topics of presentation or the presentation materials. Without viewing the YouTube link of the meeting, the Public would have no information regarding the topics discussed during the time of Mr. DiJulio's training and Ms. Lawrence's presentation to the Board that day.

Mr. DiJulio provided legal guidance on the obligations of elected officials and specific training regarding conflicts of interest of Board Directors, among other things, and Ms.

Lawrence provided an overview of insurance coverage for the District as it relates to the KSD's Directors & Officers. Ms. Lawrence described to the KSD Board that the insurance company does not provide coverage for acts of misfeasance, malfeasance, or violations of the oath of office.

Per Ms. Lawrence, the KSD's Directors & Officers insurance coverage only covers those amounts for actions the Board takes "collectively" and "while doing [so] in good faith." The insurance company expects that some activities with legal risk and liability will go on—but what is not covered by insurance are wrongful acts, violations of civil rights, misfeasance or malfeasance, damages to others, discharge of duties, or if Board Directors cause damages and the aggrieved party brings claims showing the Board or its directors and officers were not acting within the scope of their duties.

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Minutes: https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CQRL5K54A245

#### IV. PETITIONERS' GENERAL STATEMENT ON RECALL PETITION

Recall Petitioners assert that Board Director Clark, through deliberate individual actions, has violated Washington state law, KSD Board policies and District procedures, as well as the constitutional and due process rights of a fellow Board Director. These actions have inflicted irreparable harm on the public, Director Cook, and the District—and has exposed the District (and the community that supports it) to significant financial risk and legal liability.

#### A. Violations of the Oath of Office and Failure of a Duty.

KSD Board Directors swear an oath to uphold the Constitutions of the United States and Washington State, to abide by all applicable laws, and to adhere to the ethical code of conduct for public officers. Director Clark has breached this oath through individual actions as detailed in this Recall Petition, including misconduct in office that constitutes misfeasance and malfeasance. A failure of a duty of a public officer is a misdemeanor under RCW 42.20.100. Such failures betray the Public's trust in KSD Board and District leadership.

# B. Lack of Oversight and Accountability regarding Contracts with the District; Violations of Law regarding the Procurement of Goods and Services.

Director Clark has overseen or ignored rampant policy violations, including sole-source contracts (*e.g.*, the Apptegy communication platform and website) and unbid consultant agreements (*e.g.*, Dr. Lawrence Nyland's "Learning Unlimited"). In the case of Dr. Nyland's consulting services—his services commenced without Board approval and without a contract, violating District bid and procurement and contracting policies and procedures, in addition to state and federal laws governing the financial accounts of a school district. This is a failure of ethical oversight by Director Clark and a violation of <u>RCW 39.26.140</u>.

# 1. Sole Source Contract—Apptegy.

The recent <u>Apptegy</u> contract—for the District's replacement of its communication platform, including its website—is one example of a sole source contract being improperly approved by the KSD Board.<sup>31</sup>

<sup>&</sup>lt;sup>31</sup> See CHARGE FIVE for more detail.

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# 2. No Contract Before Services Began; Sole Source Contract—Dr. Lawrence ("Larry") Nyland and Learning Unlimited.

Independent consultants have been hired and have provided services without a contract. In the case of hiring consultant Dr. Lawrence Nyland and his company "Learning Unlimited"—no bid process was followed before a decision was made on the vendor, and no explanation was provided for not following a noncompetitive bid procurement process. Work was performed prior to any contract being formed, with no approval of the Board for the expenditures in advance of incurring them in some instances.

It is the understanding of Recall Petitioners that no contract with consultant Dr. Lawrence Nyland or his company "Learning Unlimited" has ever been placed on any agenda for review and consent by the Board (the presentation of budget implication to the District for Dr. Nyland's services has been presented as "informational" on Board meeting agendas. Superintendent Vela is the signatory on the two contracts that do exist for Dr. Nyland / Learning Unlimited—which were created after the fact (after services had begun by the vendor, which violates the District's "vendor relationship / gifts" policy for services being provided in advance of a contract).<sup>32</sup>
Contracts of the District may not be entered into retroactively, but a March 2023 contract for Dr. Nyland was retractive to include work for the entire 2022-2023 school year.<sup>33</sup>

### 3. Superintendent Vela's Contact Extension in Violation of Law.

Superintendent Vela's contract was voted on or signed on September 11, 2024, with a retroactive effective date of July 1, 2024, in violation of <u>RCW 28A.400.315</u>—Employment Contracts. Board Director Clark voted to approve a contract that is in violation of Washington law.<sup>34</sup>

### C. Resolution 1669 Litigation—Unlawful Actions and Financial Risk.

Director Clark's individual actions include holding improper executive sessions to craft Resolution 1669 and suppressing Director Cook's right to due process and a public hearing.

<sup>&</sup>lt;sup>32</sup> See BP <u>6230</u> (and BP <u>5050</u>; <u>6020</u>; <u>6220</u>; <u>6220P</u>).

<sup>&</sup>lt;sup>33</sup> See CHARGE FIVE for more detail.

<sup>&</sup>lt;sup>34</sup> See CHARGE FIVE for more detail.

The KSD Board has limited authority and does not have the legislative power or authority to further delegate a Board member's individual authority—which the Washington Legislature and the electorate (voters) grants to each individual Board member through an election process—to other elected or unelected municipal officers of Kent School District via overbroad policies or resolutions.

The KSD Board had an opportunity to settle the Resolution 1699 litigation—to enter into a stay of the litigation and attend mediation to de-escalate and resolve the dispute with Director Cook. The Board's refusal to settle the litigation through a mediation process further compounded the harm (the damage to Director Cook and the financial implications to the Public with a continued dispute) given that Director Cook's case has not been heard on the merits due to a procedural technicality in service that occurred when he was without legal counsel (as a "pro se" plaintiff)—and the King County Superior Court's dismissal of his case is now under appeal before the Court of Appeals – Division I (with the assistance of legal counsel). There is a potential for Director Cook's case eventually being remanded to superior court by the appeals court, to allow his case to be heard on the merits given that it involves violations of due process and civil rights.

The Public continues to be directly impacted by the improper Labor Policy Committee having been created by a hostile majority of the Board through the enactment of Resolution 1669 on February 28, 2024—despite the unexplained and immediate suspension of the same policy on October 9, 2024 (the "final action" of Directors Margel and Clark taken at that meeting wasn't properly noticed or described in advance to the Public and was not provided to fellow Board Directors in advance). The ability to provide written comment, which needs to be provided by the Public to the Board/District in advance of the open meeting where final action is to be taken, was not afforded the Public, which violates Chapter 42.30 RCW.

Director Cook's eventual settlement with (or trial judgment against) the Kent School District will be a significant cost to Public. *The District's insurance broker does not cover* 

<sup>&</sup>lt;sup>35</sup> See EXHIBIT 15 (August 9, 2024 email between Lara Hruska and P. Stephen DiJulio re settlement).

Director & Officer actions of misfeasance, malfeasance, violations of oath of office or any violation of civil rights. This means that the cost of any settlement or judgment at trial is not likely to be insured—which will come with a significant financial impact and consequence to the District, its community, and the taxpayers that will have to pay for it. 36

D. Irreparable Harm to the Community.

The individual actions of Director Clark, alongside a complicit Board majority (which included former Director Farah, who is no longer subject to recall given that he has stepped down from the KSD Board), has shattered public confidence in KSD leadership. This loss of trust has jeopardized future bonds and levies, threatens property values, as well as the District's ability to serve its students and families.

### E. The Public Must Take Collective Action (Rather than Individual Action).

It appears that individuals within the KSD community do not have the ability to succeed with an individual appeal of KSD Board action when the Board action affects all members of the Public in the same way. The Public must take collective action through something like a class action lawsuit, or by collectively seeking the recall of their elected officials when members of the KSD Board do not act in the best interests of the community.<sup>37</sup>

Recall Petitioners assert the individual actions of Board Director Clark has caused financial risk, legal liability, and loss of community trust, justifying a special election of the Public for the purpose of recall.

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<sup>36</sup> See Section V and <u>CHARGES ONE THROUGH FOUR</u> for more detail regarding Resolution 1669.
 <sup>37</sup> See Nelson and Cook v. Kent School District No. 415, KCSC Case No. 24-2-06877-5 KNT at Dkt. 72 (Order

the Washington State Court of Appeals, or the Washington Supreme Court, to decide whether substantial compliance in notice to the Secretary of the KSD Board is adequate for Director Cook's case to proceed. If he is successful with the appeal, his case will likely be remanded to superior court and allowed to proceed through the

discovery phase and onto trial.

Granting Defendants' Motion to Dismiss, p.2, fn.2 "...the Court finds that she is not a person "aggrieved" by any decision" under RCW <u>28A.645.010(1)</u>. Ms. Nelson has no more particular or unique interest related to passage of Resolution 1669 than does any other member of the general public. Ms. Nelson is therefore without standing to challenge the Board's actions pursuant to that provision.") (hyperlink added). Ms. Nelson was going to be dismissed

regardless (as a concession that her standing is no different than any other member of the Public). Since Director Cook is uniquely aggrieved by Resolution 1669, Lara Hruska and Luke Hackenberg of Cedar Law PLLC see the merits of his case and have submitted a Notice of Appeal to the Court of Appeals, Division I. It will now be up to

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#### V. FACTS RELATED TO CHARGES ONE THROUGH FOUR

# (Background and Events Leading to the Adoption and Suspension of Resolution 1669)

The Board took improper action on February 28, 2024<sup>38</sup> (and in the months and days leading up to that regular meeting of the Board) that adversely affected Director Donald Cook. Resolution 1669 caused the sub-delegation of Director Cook's authority regarding labor matters and oversight of the District in exempt sessions, going against Washington law and public policy. There is no provision in Washington law that provides for this type of delegation for special purpose districts.<sup>39</sup>

Resolution 1669 provides broad and discretionary powers to the Labor Policy Committee. Resolution 1669 is not required by law, but delegates authority provided by law. 40

The employment of staff and related bargaining is the largest expense of the KSD. Oversight of the KSD related to labor matters and bargaining discussions in exempt session is essential to a Board Member's position.

Alternatives were not explored. At the February 28 meeting, Director Song made a motion to table discussion of Resolution 1669 to allow further inquiry of the community and union representatives. The motion was denied. P. Stephen DiJulio, KSD outside legal counsel, described one alternative to the exclusion of a Board member from exempt sessions would be that the Superintendent may have individual discussions with Board Directors to obtain their thoughts regarding same.<sup>41</sup>

### Director Cook's Campaign and Election; Oath of Office.

Director Cook was elected by voters in November 2023 and took his oath of office at a swearing-in ceremony at a regular meeting of the Board on December 13, 2023.<sup>42</sup>

<sup>&</sup>lt;sup>38</sup> See February 28, 2024 regular meeting of the Board at https://www.youtube.com/watch?v=zHLKuztB93k. Director Cook's testimony and the discussion of Resolution 1669 by the Board is at 2:38:40 – 4:10:24. In-person and online comments of the community are at 2:02:37 - 2:38:30 (all community comments were against the passage of Resolution 1669).

<sup>&</sup>lt;sup>39</sup>See "The Open Public Meetings Act—How it Applies to Washington Cities, Counties, and Special Purpose Districts" at pp. 2 and 3.

<sup>&</sup>lt;sup>40</sup> See **EXHIBIT 3** (Resolution 1669; Notice of Intent and Purpose).

<sup>&</sup>lt;sup>41</sup> See February 28, 2024 Regular Meeting: https://www.youtube.com/watch?v=zHLKuztB93k&t=10287s at 2:02:28-4:10:18.

<sup>&</sup>lt;sup>42</sup> See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CWZRNZ6EE33A.

PETITION FOR THE RECALL OF A BOARD DIRECTOR

OF KENT SCHOOL DISTRICT NO. 415 - 18

Director Cook stated during his campaign and after his election that he would recuse himself from KEA bargaining discussions and any vote on KEA collective bargaining agreements due to the fact that he is married to a teacher that teaches within Kent School District. Director Cook has been at all times transparent to the Public about his spousal conflict in KEA union contract. He has followed the correct process for disclosing his remote conflict of interest—for which a specific exception applies (allowing a Board Director to be married to a teacher within the District, if the spouse was a teacher in the District prior to being elected). RCW 42.23.030(11).

### B. Director Cook's Spouse is a Teacher and Member of KEA.

Alicia Gray, Donald Cook's spouse, is a certificated teacher within the Kent School District and was so prior to Director Cook taking office in December of 2023. Ms. Gray's employment and her fixed salary is subject to a collective bargaining agreement with the Kent School District. She is a member of the Kent Education Association and participates in her union as a member of the KEA executive board (an elected position by a vote of union membership)—deciding administrative matters. Director Cook's spouse is not a member of any bargaining team or privy to any bargaining discussions on behalf of the union for which she is a member. The conflict regarding Director Cook's spouse is a remote conflict of interest—a specific exception applies in the State of Washington that allows a Board Director to have a spouse that works within the District if she was employed with the District prior to the elected role and her salary is subject to the same agreement as all other certificated teachers within the District. Director Cook's remote interest is allowed. RCW 42.23.040(11).

### C. January 10, 2024 Meeting at KSD.

On January 10, 2024, Board President Margel, Superintendent Israel Vela, and District General Counsel Paul Brachvogel privately met with Director Cook in advance of a regular meeting of the KSD Board. Board President Margel inquired of Director Cook as to whether his wife would step down as an executive board member for her union. This was an unfair labor practice. RCW 41.56.140 ("It shall be an unfair labor practice for a public employer: (1) To

interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; (2) To control, dominate, or interfere with a bargaining representative").

D. Improperly Noticed Executive Session for January 24, February 7, and February 14, 2024.

Most of the KSD Board's notices for Executive Session meetings contain the same blanket statement that the meeting is to "discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action". It is a distinction that a more appropriate meeting description would have been that on January 24, the Board met to receive and evaluate a charge or complaint made against a public officer, and specifically, a Board Member.

In numerous public and private discussions, Director Cook asked for the charge or complaint made against his participation in labor matters, and for the discussions and deliberations of the Foster Garvey Memo be brought into the Public—*he was denied that right* by Directors Margel and Clark, and former Director Farah. RCW 42.30.110(f)(i).

#### E. Due Process Not Afforded Cook.

A fundamental requirement for the process of taking adverse action against a Board Member is to allow for due process.

Director Cook requested that independent legal counsel be provided for the Board. He requested that his personal counsel be able to attend meetings (in the absence of independent legal counsel for the Board). The District and a hostile majority of the Board (Directors Margel and Clark, and former Director Farah) used the Foster Garvey Memo and Resolution 1669 to remove the civil and constitutional rights of a duly elected Board Member and denied a fellow Board Director his right to due process as a citizen within the State of Washington and the United States of America. See RCW 42.30.110(1)(f) ("However upon request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge.").

Complaints or charges brought against a public officer or employee (RCW 42.30.110(1)(f)). Note: At respondent's request, discussion must be in open session.

Director Cook had the right to attend those closed sessions he was improperly excluded from; he had a right to due process and a public hearing<sup>43</sup> regarding the adverse action being considered and taken against him by the KSD Board—and the community (the electorate) have a right to recall elected officials that have gone off the rails with their self-serving and egregious actions which have caused irreparable harm to this District—including to the relationship between the District and the many unions that represent its staff.

- F. Memos drafted by outside Counsel P. Stephen DiJulio and the District's then-General Counsel Paul Brachvogel.
  - 1. The "Foster Garvey Memo" used in the Development and KSD Board Deliberation of Resolution 1669.

The "Foster Garvey Memo" regarding Resolution 1669 (which contemplates the KSD Board taking adverse action against an officer of the Board) was drafted by outside counsel, P. Stephen DiJulio of Foster Garvey PC—at the request of Board President Margel and Superintendent Vela.<sup>44</sup>

The Foster Garvey Memo was used in Board discussions during the development of Resolution 1669, and despite it being marked "Attorney Client Privilege" by external counsel, the KSD Board deliberated, considered, and relied upon the Foster Garvey Memo in the development of a resolution or policy of the District which contemplated adverse action to be taken against an officer of the Board. The memo is not privileged at all—it is a Public record. Resolution 1669 has always been about a personal agenda and the improper individual acts by a hostile majority of the Board (Directors Margel and Clark and former Director Farah) were an attempt to silence a Board Director that did not "toe the line."

Any claim of privilege to the Foster Garvey Memo was Director Donald Cook's to make (he is the individual specifically discussed in it, and the reason for the Foster Garvey

<sup>&</sup>lt;sup>43</sup> See MRSC: Executive Session Basics and MRSC: Executive Sessions Checklist.

<sup>&</sup>lt;sup>44</sup> See EXHIBIT 2 (Foster Garvey Memo). See also EXHIBIT 17 (March 7 and 14, 2024 Paul Brachvogel Memos).

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Memo to be drafted in the first place—that he is married to Alicia Gray, a certificated teacher within the KSD and her fixed salary is subject to a KEA collective bargaining agreement with the KSD and was so prior to his election—was generalized knowledge and not something unique Director Cook had learned in any Executive Session of the KSD Board. The KSD and its Board cannot claim any privilege to the Foster Garvey Memo). See AGO 2017 No. 5.

# 2. First Version of Foster Garvey Memo.

During the January 24, 2024 Executive Session, the Board was presented with the first version of a memo drafted by Mr. DiJulio (the "Foster Garvey Memo") discussing the exclusion of Director Cook from closed/exempt sessions of the KSD Board related to labor matters and collective bargaining. During the discussion that followed, Director Cook demanded that the matter be brought into the Public (the Foster Garvey Memo and the reason why it was drafted in the first place). This demand for due process was denied by a hostile majority of the Board. Director Song had brought up concerns during the January 24 Executive Session, so edits were going to be made to the memo in advance of the February 7 Executive Session.<sup>45</sup>

The idea that Ms. Gray allegedly provides oversight of the KEA bargaining commission in her role on the union's board was the premise for the exclusion of Cook from all exempt sessions related to labor matters and bargaining as contemplated in the Foster Garvey Memo. Ms. Gray's position on the board (which handles administrative matters) was obtained by an election of union members—not through an appointment by union leadership. She is allowed to participate in the union for which she is a member.

#### 3. Final Version of Foster Garvey Memo.

In the final version of the Foster Garvey Memo, Mr. DiJulio improperly advised the KSD Board that "a school board member's primary duty (a fiduciary responsibility) *runs first to the school district*" and cites to RCW 42.23.070 (3) and (4). [Correction: Board members have a fiduciary duty to the Public.] The Memo states further "That the duty applies notwithstanding other duties, such as duties between a lawyer and a client, or between spouses.

<sup>&</sup>lt;sup>45</sup> See EXHIBIT 2 (Foster Garvey Memo). and EXHIBIT 17 (March 7 and 14, 2024 Paul Brachvogel Memos).

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Mr. DiJulio further advised the KSD and Board regarding a director's obligation to a spouse, employer or another—that a director's controlling duty is to the District and its contractual commitments.

# 4. **Disclosure of Foster Garvey Memo.**

The KSD's then-General Counsel Paul Brachvogel shared the first version of the Foster Garvey Memo with Director Cook by email (outside of Executive Session) on January 22, 2024. The email and its attachment are a Public record; the Foster Garvey Memo was provided for Board discussion and deliberation. *See* Dkt. 21 (Cook Decl. at ¶8), KCSC Case No. 24-2-06877-5 KNT.

On January 30, 2024, Mr. Brachvogel shared a second version of the Foster Garvey Memo with the KSD Board by email (outside of Executive Session). The email and its attachment are a Public record. Cook Decl. at ¶9.

When due process was not provided to Director Cook, and after first learning on February 24 that Resolution 1669 was placed onto the February 28 Regular Meeting Agenda for taking final action, Director Cook posted in a KSD Discussion group on Facebook a plea to the Public for support. Cook Decl. at ¶10.

On or before February 24, Board President Margel and Superintendent Vela unilaterally decided to take Resolution 1669 out of Executive Session, and placed it onto the Agenda for the Board to take final action at a regular meeting. Before publishing the notice of the meeting and the related agenda, there was no group consensus of the Board or advance notice that it would be taking out of Executive Session for taking a vote on Resolution 1669.

On February 24, after the meeting notice and agenda was published for the February 28 meeting, Director Cook made two public Facebook posts that included the final version of the Foster Garvey Memo describing the adverse action the Board would be taking against Director Cook through Resolution 1669. Cook Decl. at ¶11.

Director Cook had every right to publish the Foster Garvey Memo. The District and its Board have received very poor legal counsel on this matter, or have disregarded any good advice

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they may have received (the improper individual actions of Directors Margel, Clark, and former Director Farah speak for themselves).

Resolution 1669 has always been about a personal agenda for Board President Margel and Superintendent Vela and a hostile majority of the KSD Board [that was disappointed Director Cook won his election by a slim margin against the incumbent candidate—former Board Director Leslie Hamada]— and the individual actions of Directors Margel and Clark (and former Director Farah) caused the improper Resolution to be enacted due to acts of misfeasance, malfeasance, or violations of the oath of office.

5. Privilege Cannot Be Asserted by the Governing Body for All Legal Advice it Receives.

As stated in AGO 1971 No. 33: "In light of the privileges set forth in RCW 5.60.060, supra, and the interpretation of the California act which is substantially the same as Washington, the AGO concluded that there remains a modified attorney-client privilege for the governing body of a public agency in this state. This privilege cannot be asserted by the body for all legal advice which it receives, particularly that which fits within the concept of deliberations of the body. However, those sensitive areas of legal advice, particularly with reference to pending or contemplated litigation, settlement offers and similar matters, can, in our opinion, be discussed between the governing body and its attorney in a closed session." Emphasis added.

6. Paul Brachvogel Memos (dated March 7 and March 14, 2024 and obtained via MuckRock.com).

On October 8, 2024, Recall Petitioner Greta Nelson received an email from "Kent Parents for Change" (kentparentsforchange@hotmail.com) that included two hyperlinks to a public-facing records request as submitted to the KSD via <a href="www.Muckrock.com">www.Muckrock.com</a>—several public records requests by the same group or individual (with the assistance of MuckRock) were posted and available on MuckRock's website. As a result of the October 8, 2024 email, Ms. Nelson obtained two memos dated March 7 and March 14, 2024 that were drafted by former KSD General Counsel Paul Brachvogel. The records requests were later withdrawn and are no longer

available, after an acknowledgement by the District was posted with a plea to the requestor to remove the "attorney client privileged" information from Public view. Both memos contain information that provide context and directly relate to bad acts of the Board and District as alleged in this Recall Petition.<sup>46</sup>

# G. Violations of Open Public Meeting Act.

A knowing or intentional violation of the OPMA may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the OPMA.<sup>47</sup>

Multiple Executive Sessions of the KSD Board were improperly noticed and went against the requirements of <u>Chapter 42.30 RCW</u>—Open Public Meetings Act. Improperly noticed Executive Session were held on January 24, February 7, February 14, 2024 regarding adverse action against an officer of the KSD Board:

<sup>46</sup> See EXHIBIT 17 (March 7 and March 14, 2024 Memos drafted by KSD's then-General Counsel Paul Brachvogel for Superintendent Israel Vela, as disclosed and obtained via public records request and made available to the Public—presumably, an inadvertent disclosure by the District).

<u>Original Source Link (records request no longer available</u>: https://www.muckrock.com/foi/kent-67/kent-school-district-censure-resolution-and-racketeering-influence-corrupt-organizations-act-rico-investigations-of-kent-school-district-school-board-director-donald-cook-and-kent-education-association-representative-christine-padilla-174218/.

MuckRock is a non-profit that can assist with public records requests, among other things. See MuckRock's "About Us" page at https://www.muckrock.com/about/). Ms. Nelson is not familiar with the group "Kent Parents for Change," had never received an email from that email address before (or since), has no affiliation to any group of that name, and had never heard of MuckRock prior to the October 8 email she received. Found at the link was a March 14, 2024 legal memo drafted by the KSD's former General Counsel Paul Brachvogel. A second request to the KSD by the same requester included another legal memo dated March 7, 2024 drafted by Mr. Brachvogel for Superintendent Vela. The KSD Public Records Officer requested that both legal memos be removed from public view, noting that the "attorney client privileged" items would be redacted and resubmitted to the initial requester that had received the items without redactions. The public-facing documents (PDFs of both memos) and related records requests, and the District's response (through its Public Records Officer) and communication between MuckRock and the requestor are no longer available on MuckRock's website.

Given the sensitive nature of some of the information included in the <u>March 14 legal memo</u>, Recall Petitioners are only including information specific to their areas of focused advocacy and citizen oversight within this Recall Petition—all other information has been redacted. The <u>March 7 legal memo</u> is included without redaction as it directly relates to Resolution 1669 and the Board and District's adverse actions taken against an officer of the KSD Board.

*See also* EXHIBIT 30 (December 11, 2024 Lori Waight Email re PRA Disclosure via MuckRock and Paul Brachvogel March 7 and March 14, 2024 Memos).

PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT SCHOOL DISTRICT NO. 415 - 24

RECALL PETITIONERS
GRETA NELSON
MICHELE BETTINGER
LORI WAIGHT

<sup>&</sup>lt;sup>47</sup> See Recall of Lakewood City Council (2001), In re Recall of Kast (2001).

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1	EXE	CUTIVE SESSION NOTICES & MEETING MINUTES [January 24, February 7, and February 24]			
2		[oundary 24, 1 cordary 7, and 1 cordary 24]			
3	January 24, 2024	Notice of Executive Session: The purpose of this executive session is to discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action.			
4		Minutes of Executive Session			
5		https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2B7MA1A3D54/\$ file/Executive%20Session%202024%2001%2031.pdf			
6	E-17 2024	No. 4 in a C. T.			
7	February 7, 2024	Notice of Executive Session: The purpose of this executive session is to discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action.			
8		Minutes of Executive Session			
9		https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2B77G1838F5/\$file/Executive%20Session%202024%2002%2007.pdf			
10	February 14, 2024	Notice of Executive Session: The purpose of this executive session is			
	1 coluary 14, 2024	to discuss performance of a public employee, potential litigation, and the			
11		legal or financial risks of a course of action.			
12		Minutes of Executive Session https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2MV9K7FA597/\$			
13		file/Executive%20Session%202024%2002%2014.pdf			
14	See also <b>FXHIRIT 17</b>	(describing the executive sessions)			

See also **EXHIBIT 17** (describing the executive sessions).

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When Director Cook asked for the adverse action the KSD Board was deliberating and considering taking against him to be brought out of the closed session and before the Public, he had that right—and the Public had the right to observe.

Rather than a discussion of a legal and financial risk for the District<sup>48</sup> (as provided in the Notice to the Public)—it was a discussion of taking specific and adverse action against a duly elected Board Member—Director Cook was denied due process and his constitutional rights were violated.<sup>49</sup>

#### H. Resolution 1669 not legally required.

The Notice of Intent and Purpose of Resolution 1669 describes the intent of the Resolution, which is to create a Labor Policy Committee of the Board, appoint initial members

<sup>&</sup>lt;sup>48</sup> See February 28, 2024 YouTube link at <u>3:11:16</u>: https://www.youtube.com/watch?v=zHLKuztB93k (Paul Brachvogel describing the reason for Executive Session regarding Resolution 1669; Director Cook asks "what was the legal and financial risk?" at <u>3:18:26</u>).

<sup>&</sup>lt;sup>49</sup> See Greta Nelson and Donald Cook v. Kent School District No. 415, et al., KCSC Case No. 24-2-06877-5 KNT.

and delegate authority, and to provide for "related matters." It specifically states to the Public that Resolution 1669 *is not legally required*. 50

The individual actions of Board Director Clark caused a not-legally-required Resolution to be enacted which removed the authority of a fellow Board member and delegated that authority to unelected municipal officers of the KSD.

Director Clark's individual actions are self-serving, he has violated his oath of office, and his poor performance is a disgrace to the community that he serves. There was no specific, threatened, contemplated, or pending litigation regarding Director Cook's participating in collective bargaining matters of the District. Board Directors Margel and Clark (and former Director Farah) and Superintendent Vela, with the help of legal counsel Paul Brachvogel and P. Stephen DiJulio, cooked up a solution to a hypothetical problem that did not exist, as a means to silence a Board member they did not like personally.

### I. Labor Policy Committee.

A committee of the KSD Board that contains a quorum / majority of its Board Directors is a second "governing body" of the District, causing the committee to be subject to the OPMA. Despite the efforts of a hostile majority of the KSD Board (and the individual actions of Director Clark and other municipal officers of the District) to hide behind an exception for collective bargaining as it relates to the OPMA—the basic construct of the Labor Policy Committee is not allowed by law for special purpose districts, therefore no meetings of an improper committee of the District can be attended by any member of the Board without the Director(s) violating the OPMA and their fiduciary duty to the Public.

The electorate delegates its authority to school board members through an election process, as provided by the Washington Legislature, for the safekeeping and proper administration of the District—the KSD and its Board do not have the authority to further delegate any individual authority that is provided to elected Board members by the Washington Legislature and the voters in the District.

<sup>&</sup>lt;sup>50</sup> See **EXHIBIT 3** (Resolution 1669, Notice of Intent and Purpose).

Resolution 1669 is not a valid exercise of the District's authority (despite Defendants' and Mr. DiJulio's arguments in the Resolution 1669 litigation). The District has no authority in the final setting of policy; the Board does. The Board has not been properly advised in the passage of the Resolution and does not have independent legal counsel (separate from the District's legal counsel).

The Resolution "authorizes and directs" <u>policy development and implementation</u> of the Resolution to the "Superintendent, Chief Financial Officer and designees, on behalf of the Board, to work with the Committee to <u>negotiate and prepare the agreements necessary to satisfy the</u>

<u>District's obligations</u> under the Public Employees' Collective Bargaining Act, other law and contracts."51

Per KSD BP 1240, "No more than two board members will participate in any district committee." The Labor Policy Committee consisted of <u>four</u> Board members. The "initial" Labor Policy Committee is composed of "Directors Margel, Farah, Clark, and Song, and supported by the Superintendent and designees of the Superintendent." More than two Board Members of the KSD is considered a majority of the Board (a quorum). 53

The "Board members who are present at district committee meetings will attend in an "at large" capacity as listeners and observers only, and report back to other board members during the directors' board reports section of the regular meeting agenda." KSD BP 1240.

Director Clark willingly attended closed meetings of an improper committee—and as a member of the improper Labor Policy Committee, Director Clark improperly excluded a fellow Board Director from participating in discussions, the setting of bargaining parameters, deliberating, and coming up with a positive or negative decision on a course of action in bargaining. By voting to approve the creation of the improper committee he has placed the District and its Board in a position of high financial and legal risk in litigation, with the Public on the hook to pay for those improper individual acts.

See Res. 1669 §3 at EXHIBIT 3.
 See Res. 1669 §2 at EXHIBIT 3.

<sup>53</sup> See also RCW 28A.343.390.

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# J. Conflict(s) of Wade Barringer and KSD Collective Bargaining.

Deputy Superintendent Wade Barringer is the second in command at KSD and was a long-time principal at Kent Meridian High School prior to his current role. He has multiple known conflicts of interest in unions that bargain with the KSD—his current spouse is a member of the principals union and her employment is subject to a collective bargaining agreement between the KSD and the principals union, and his former spouse is a teacher in the KSD and a member of the teachers union.

Dr. Barringer is a member of the bargaining team on behalf of the KSD with the principals and teachers unions through his position as Deputy Superintendent of KSD, and through Resolution 1669, became a member of the Labor Policy Committee on February 28, 2024.

Given the precedent that Resolution 1669 set, Dr. Barringer should not participate in any labor matters or policymaking or attend any exempt sessions for the Kent School District discussing labor matters—however, the restrictive terms of Resolution 1669 only exclude Director Cook (an elected officer of the Board) from having a conflict in labor matters and policymaking—and not appointed municipal officers such as Dr. Barringer.

As a member of the Labor Policy Committee, Dr. Barringer was provided more information and authority on collective bargaining matters for the District, than an elected Board Member (Director Cook), despite having the same spousal conflict (being married to someone that is employed by the District).<sup>54</sup>

# K. Arbitrary Actions by Board Regarding Conflicts of Interest.

Resolution 1669 excluded an elected Board Member with a remote conflict of interest (for which there is a specific exception in law) from participation in labor matters that are discussed and developed in closed sessions of the Board, but the restrictive terms of the resolution do not exclude appointed municipal officers from having union conflicts, such as Dr. Barringer's conflict with the Principals union. This is an arbitrary application of

<sup>&</sup>lt;sup>54</sup> See **EXHIBIT 3** (Resolution 1669; Notice of Intent and Purpose).

policy/procedure regarding conflicts of interest by officers of the KSD and its Board. Despite Dr.
Barringer's conflicts of interest in two unions through his current spouse and former spouse, Dr.
Barringer (an appointed municipal officer District) was made a member of the KSD's Labor
Policy Committee, and Director Cook (an elected officer of the Board providing oversight of the
District) was excluded.

Because an exception applies to Director Cook's remote interest in contract, no development of any contract in which Director Cook participates will cause the contract to be voided due to having violated any statute (despite the District's current position and the guidance provided by its legal counsel in the Foster Garvey Memo that included outside counsel's interpretation of *City of Northport* case). Director Cook has stated he will recuse himself from voting on the KEA contract at every opportunity to do so.

Despite the District's counsel's disappointment that it is no longer 1994 when different laws were at issue—it is many years later, and there is existing law that provides for a specific exception regarding Director Cook's spouse—he is considered to have <u>no beneficial interest</u> in contract according to current Washington law—the Washington Legislature changed the law to expand the pool of available candidates willing to serve in the role of school board director).

Director Cook's spouse has no ownership interest in her union of more than one percent; she is not a member of any bargaining committee on behalf of her union; and she has the right and ability to participate in her union. The District and its Board—led by Board President Margel and Superintendent Vela and followed by Directors Clark and Farah and other municipal officers of the District and legal counsel—have inserted legal issues and concern where there are none—given that existing law allows Director Cook to be married to a certificated teacher working within the Kent School District, because her salary is fixed and subject to a collective bargaining agreement (the same as all other certificated teachers within the District), and she was employed with the District prior to Director Cook being seated on the KSD Board.

Compare the individual actions of Board Directors Margel and Clark and their treatment of Director Cook regarding his remote conflict of interest in KSD contract, for which

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1	there is an exception in law (Director Cook's spouse is a certificated teacher and employee of the		
2	District), but adverse action was taken against him for it despite the exception—to their		
3	treatment of former Director Farah regarding his beneficial conflict of interest in KSD		
4	<u>contract</u> , for which there is no exception (Director Farah's spouse is a salaried officer of the		
5	Board of Directors for Living Well Kent ("LWK")—which is a contracting party of the KSD—in		
6	addition to being its founder and Executive Officer). Director Farah joined the KSD Board just		
7	weeks after <u>LWK Contract #1</u> was entered into with the KSD in October 2021. Five months		
8	later in March 2022, the KSD Board (and Director Farah) voted on and approved <u>LWK</u>		
9	Contract #2, without Director Farah first disclosing his conflict of interest to the Public or his		
10	fellow Board members before the vote. When Director Farah's conflict became public		
11	knowledge, it was brought before the Board for a re-vote or ratification where Director Farah		
12	recused himself from the vote. But the law is clear—especially because of the non-disclosure of		
13	his beneficial conflict of interest through his marital community—the contract should not have		
14	been allowed to proceed through a ratification process (and should be void). See AGO 1954 No.		
15	317. A subsequent <b>LWK Contract #3</b> was brought before the Board in December 2022 and it		
16	was also approved by a majority of the Board (voting Board members included Directors Margel		
17	and Clark).		
18	The individual votes of Directors Margel and Clark on <b>LWK Contract #3</b> allowed an		
19	improper contract of the District to proceed despite the well-known-by-then beneficial interest in		
20	contract of Director Farah—through his spouse's ownership or controlling interest of more than		
21	one percent of a contracting party of the District—and his prior non-disclosure of a beneficial		
22	interest in contract with a contracting party of the District before he participated in and voted to		
23	affirm a contract in which he has a beneficial interest. <sup>55</sup>		
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<sup>55</sup> See <u>CHARGE SIX</u> for more details regarding former Director Farah's known conflict of interest and the individual acts of Directors Margel and Clark that allowed an improper contract to be entered into with the KSD.

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L, Misinformation—the District's Claim of Union Opposition Regarding Director Cook's Participation in Bargaining Matters Turned Out to be a Fabrication.

District officials stated that the KSD had received complaints or charges from several unions that bargain with the KSD related to Director Cook's participation in closed sessions related to bargaining, however, that turned out to be a fabrication. All unions that bargain with the KSD (with the exception of the principals union) stated they either weren't approached by the KSD related to Director Cook's participation in bargaining at all, or if they had been approached, their union leadership did not take issue with Cook's participation. Only one union, the principals union, has chosen not to make a public comment against Resolution 1669.<sup>56</sup>

#### M. **Community Opposition to Resolution 1669.**

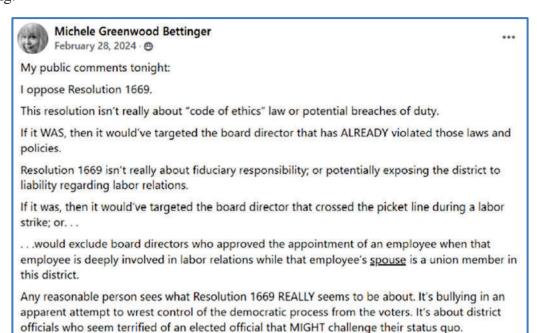
1. Greta Nelson's Involvement Regarding Resolution 1669 Litigation.

Recall Petitioner Greta Nelson's involvement regarding Resolution 1669 began as a direct result of reading Director Cook's February 24 plea to the Public to become involved and the agenda materials posted by Board President Margel, Superintendent Vela and the KSD in advance of the February 28, 2024 regular meeting of the KSD Board. See Nelson and Cook v. Kent School District No. 415, et al., KCSC Case No. 24-2-06877-5 KNT.

Ms. Nelson read the Facebook posts by Director Cook on February 24 and made plans to attend a school board meeting for the first time—she did not know Director Cook personally at that time. Ms. Nelson's attendance at the February 28 KSD Board meeting started what has now become a one-year-long process of taking notice of various improper actions of the KSD Board, providing public comments at KSD Board meetings, appealing Board action in King County Superior Court (while assisting a KSD Board Director with his appeal of the same Board action and then causing both cases to be consolidated before the same judge), and advocating for change on the KSD leadership team. Id. This Recall Petition continues that process.

# 2. Former KSD Board Director Michele Bettinger's Public Comment on February 28, 2024.

Recall Petitioner Michele Bettinger provided a Public comment at the February 28 meeting:<sup>57</sup>



In response to KSD Board's enactment of Resolution 1669 on February 28, 2024, community stakeholders objected extensively at every opportunity to do so. Despite the significant backlash from union and community stakeholders, the KSD Board, and specifically Board President Margel and Superintendent Vela, did not add as an agenda item to the March 13 or March 27 meeting agendas, the suspension of Resolution 1669 (prior to the community's deadline for appealing Board action in superior court of March 29, 2024). When a motion came before the Board on March 27 to re-open the vote on Resolution 1669 to allow further discussion, Directors Margel, Clark, and Farah (the hostile majority) voted it down.<sup>58</sup>

All Community Stakeholders that have provided public comments at Regular Meetings of the Board between February 28, 2024 through at least September 11, 2024, have been in

<sup>&</sup>lt;sup>57</sup> See EXHIBIT 27 (February 28, 2024 Former KSD Board Director Michele Bettinger's Facebook Post with Public Comment made at February 28 Board Meeting).

<sup>&</sup>lt;sup>58</sup> See **EXHIBIT 4** (March 7, 2024 Motion to Re-Open Vote on Resolution 1669).

opposition to Resolution 1669. There have been no comments made by the Public at a regular Board Meeting in support of Resolution 1669. The only comments made in support have been from current members of the Labor Policy Committee and KSD legal counsel.

Ms. Nelson attended every Regular Meeting of the Board between February 28 through September 11, 2024 (and also on October 9, 2024 and December 12, 2024) to observe and to hear all public comments made (a death in the family caused Ms. Nelson to miss several meetings in the fall of 2024, but suffice it to say—the community does not support Resolution 1669 (other than, perhaps, former Board Director Leslie Hamada, who Director Cook unseated in the November 2023 election, and those close to her). Recall Petitioners have each had interactions with Ms. Hamada and a handful of her supporters on social media regarding Resolution 1669 and Ms. Hamada's personal thoughts and opinions on whether Resolution 1669 was appropriate Board action, as well as regarding her general dislike of Director Donald Cook (taking every opportunity to highlight his slim margin of electoral victory against her in the November 2023 election).

# N. Union Opposition to Resolution 1669.

The KSD and its Board and legal counsel have been made aware on numerous occasions by multiple people that Director Cook's spouse is not on the KEA bargaining commission.

Union representatives and members attended the February 28, 2024 regular meeting, provided Public comments, and have been active ever since in advocating for the District and its Board to correct course regarding Resolution 1669.

At the February 28, 2024 meeting, the KSD Board had an opportunity to inquire directly of KEA's President, Tim Martin, as to whether Ms. Gray was a member of or provided any oversight of KEA's bargaining commission. Mr. Martin stood at the podium to receive questions, but Board President Margel failed to acknowledge his presence and did not seek further clarification.<sup>59</sup>

<sup>&</sup>lt;sup>59</sup> See February 28, 2024 YouTube Link: https://www.youtube.com/watch?v=zHLKuztB93k&t=10287s at timestamp **4:07:40 - 4:08:30**.

The Labor Policy Committee participated in exempt sessions related to bargaining with unions and excluded Director Cook from participating in those meetings in 2024.

#### O. Kent Labor Alliance.

All unions that bargain with the KSD—with the exception of the principals union (which was not asked to participate)—joined forces to form Kent Labor Alliance ("KLA"). KLA representatives spoke at the May 8, 2024 regular meeting of the KSD Board as to whether or not their unions had been approached by the KSD regarding Resolution 1669, and relatedly, whether the unions took issue with Director Cook's participation in closed sessions regarding bargaining matters given his spousal remote conflict of interest. All KLA representatives present stated their respective union had not been approached at all—or if it had been approached, union leadership did not take issue with Director Cook's participation so long as there was a recusal for KEA's contract. Director Cook has stated that he would recuse himself from the KEA contract per the requirements of law.

KLA representatives attended the May 22, 2024 regular meeting of the KSD Board and provided a written letter and vote of "no confidence" in Superintendent Vela and Board President Margel due to their inability to provide the appropriate leadership. KLA representatives specifically mentioned Resolution 1669 as one of the enumerated reasons for the vote of no confidence. Included was a request for Superintendent Vela's and Board President Margel's voluntary resignations from their positions.<sup>60</sup>

# P. Unethical Conduct of Board Directors Margel and Clark (and Former Director Farah) towards Directors Cook and Song at February 28, 2024 Meeting.

Per <u>BP 1400</u>—Meeting Conduct and Order of Business: "The board will conduct all board meetings in a civil, orderly, and business-like manner. The board uses Roberts Rules of Order (Revised) as a guide, except when board bylaws or policies supersede such rules. ... The board will use the agenda to establish its regular order of business. However, either the

<sup>&</sup>lt;sup>60</sup> See EXHIBIT 5 (May 22, 2024 Kent Labor Alliance Vote of No Confidence) and EXHIBIT 6 (Kent Reporter Article re the Vote of No Confidence).

by the community sta

superintendent or a board member may request additions or changes in the prepared agenda, and the board may adopt a revised agenda or order of business by a majority vote of the board members present."

The words and individual actions of Board President Margel, then-Vice President Farah, and Director Clark (as well as Superintendent Vela, the District's leadership team, and the District's legal counsel) have reflected an obvious disdain towards Directors Cook and Song, with verbal and visual displays of disrespect, during the February 28, 2024 where Resolution 1669 was first discussed publicly, and any meeting after that during which the Resolution was mentioned or discussed in any way.

Board Director Clark is not deserving of his Board position; this Recall Petition should be allowed to move forward so that the Public can pursue the only remedy available to it—a petition for the recall of the elected officials that have irreparably harmed the KSD Community.

Recall Petitioners encourage King County Elections, the King County Prosecuting Attorney's Office, and the King County Superior Court to review the February 28, 2024 meeting in full (at least as to the timestamps identified in this Recall Petition)<sup>61</sup>

# Q. Summary / Timeline of Events.

DATE	TIMELINE / EVENT DESCRIPTION
January 10, 2024	Director Cook meets with Board President Margel, Superintendent Vela, and then-General Counsel Paul Brachvogel before a regular meeting of the KSD Board.  BP Margel unfair labor practice (re Director Cook's wife).
January 24, 2024 February 7, 2024 February 14, 2024 Improperly noticed Executive Sessions	KSD Board executive sessions noticed under RCW 42.30.110(1)(i)(iii): "Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency."

<sup>&</sup>lt;sup>61</sup> See YouTube Link of February 28, 2024 meeting at: https://www.youtube.com/watch?v=zHLKuztB93k, and in particular:

Director Cook's testimony and the discussion of Resolution 1669 by the Board is at 2:38:40 – 4:10:24

In-person and online comments of the community are at 2:02:37 – 2:38:30 (all public comments submitted by the community stakeholders were against the passage of Resolution 1669).

1	DATE	TIMELINE / EVENT DESCRIPTION
2		Notably, a more accurate description is that the session was for a complaint or charge brought against a public officer, Director Cook—who had specifically requested a public hearing or a meeting open to the public. The individual acts of Board Directors Margel and
4		Clark denied Director Cook that right.
		See also EXHIBIT 17 (March 7 Brachvogel legal memo).
5 6	January 24, 2024	Notice of Executive Session: The purpose of this executive session is to discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action.
7 8		Minutes of Executive Session https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2B7MA1A3D54/\$ file/Executive%20Session%202024%2001%2031.pdf
9	February 7, 2024	Notice of Executive Session: The purpose of this executive session is to
10		discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action.
11		Minutes of Executive Session https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2B77G1838F5/\$fil e/Executive%20Session%202024%2002%2007.pdf
12	February 14, 2024	Notice of Executive Session: The purpose of this executive session is to
13		discuss performance of a public employee, potential litigation, and the legal or financial risks of a course of action.
14 15		Minutes of Executive Session https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2MV9K7FA597/\$ file/Executive%20Session%202024%2002%2014.pdf
16 17	February 14, 2024	Regular meeting of the KSD Board; Director Donald makes a "privileged motion" (Director Song seconds) for the board to have the District reimburse him for legal fees and alludes to potential violations
18		of OMPA and Executive Session; Discussion re improperly noticed meetings; something needing full investigation; unfair labor practice
19		during meeting from the dais.
20		Improperly noted Executive Session; Superintendent and 3 Board Directors; consensus on Resolution (straw poll); Public work in private
21		See YouTube Link at 3:42:40.
22		https://www.youtube.com/watch?v=gaerDSDS7bQ
		Timestamp: 3:42:38 – 4:20-59  3:43:46 Superintendent Vela brings Brachvogel up (although Board
23		didn't ask for legal counsel)
24		Director Cook makes a motion to approve to reimbursement from Board/District for legal fees from the "past few weeks"
25		3:58:46 – 4:03:35 Director Song motion to waive attorney client privilege (to release the reason to the Public whether the KSD had hired
26		counsel for the matter Cook is seeking payment of legal fees)
27		

1	DATE	TIMELINE / EVENT DESCRIPTION
		4:20:58 vote on motion; motion fails
2		Approved Minutes of Meeting:
3		https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2MV9F7FA577/\$file/Board%20Minutes%202024%2002%2014.pdf
5	February 24, 2024	The agenda and public-facing materials for the February 28, 2024 regular meeting of the KSD Board were posted by the District on behalf of Board President Margel and Superintendent Vela on February 24,
7		2024. Resolution 1669 was placed onto the agenda for the meeting—this was the first and only public reading of Resolution 1669 prior to the Board taking final action.
8	February 24, 2024:	Director Cook posts Foster Garvey Memo on Facebook, after Agenda was published by Board President Margel and
9		Superintendent Vela. The District and its legal counsel claim that this
10		is a violation of attorney client privilege, even though the Foster Garvey Memo actually contemplates adverse action against a Board Director,
11		and which said Board Director explicitly demanded (and has a right to) a Public hearing upon first learning of the contemplated Resolution 1669
12		and resulting Labor Policy Committee of the Board, that would significantly impact his rights and authority as an individual Board member on the KSD Board (elected to the position by the electerate
13		member on the KSD Board (elected to the position by the electorate, with the delegation of authority granted to him by the Washington
14		Legislature. Special purpose districts, such as school districts, do not have the ability to further delegate Director Cook's authority to others—and in particular, not to unelected municipal officers of the KSD. The
15		substantive subject of the Foster Garvey Memo is regarding Director Cook and who he is married to—as well as legal guidance that
16		contemplates taking adverse action against him.]
17		Recall Petitioner Greta Nelson read Director Cook's Facebook post and decided to attend a school board meeting for the first time; she did not
18		personally know Director Cook before becoming involved regarding Resolution 1669.
19		Per <u>AGO 2017 No. 5</u> :
20		The term "confidential information" for purposes of RCW 42.23.070(4) therefore means: "(a) specific information, rather than generalized
21		knowledge, that is not available to the general public on request or (b) information made confidential by law." RCW 42.52.010(5). Information
22		learned during a properly convened executive session fits within both possible definitions. The information is not available to the general
23		public on request because it was learned during a meeting from which the public was excluded. RCW 42.30.110(2). And, as we concluded in
24		response to your first question, information pertaining to the statutorily authorized purpose of the executive session is made confidential by the
25		OPMA.
26		Violation by the individual actions of Board Directors Margel and Clark (and former Director Farah): The executive sessions regarding
27		Resolution 1669 and which contemplated the Foster Garvey memo were

1	DATE	TIMELINE / EVENT DESCRIPTION
2		not properly convened executive sessions (improper notice and public hearing for Director Cook was denied).
3	February 28, 2024	Petitioners Greta Nelson and Michele Bettinger attended this regular
4		meeting of the KSD Board in-person; Recall Petitioner Lori Waight attended via livestream YouTube link. Ms. Bettinger provided a Public
5		comment at the meeting. See EXHIBIT 27 (February 28, 2024 Former KSD Board Director Michele Bettinger's Facebook Post with Public Comment Made at February 28 Board Meeting; and February 27 and 28,
6		2024 Email Exchanges Between Michele Bettinger and WSSDA re Resolution 1669).
7		Recall Petitioners observed the Board's and District's discussion and
8		eventual passage of Resolution 1669, as well as the egregious bullying behavior by Board and District officers towards two Board members
9		(Directors Cook and Song), and the disenfranchisement of those same two Board members, and in particular Director Cook, from the roles in
10		which they were duly elected by the electorate. Director Song's motion to table the discussion to allow further inquiry and input from
11		community and union stakeholders did not pass, so the hostile board voted on and (3 of 5 board members) approved Resolution 1669. See
12		<b>EXHIBIT 7</b> (March 7, 2024 Email from Greta Nelson to KSD Board and Superintendent).
13		At this meeting, P. Stephen DiJulio of the law firm Foster Garvey appeared virtually during the presentation of Resolution 1669 to the
14		public, in support of—or in the defense of—the Board's enactment of the Resolution, on behalf of the Kent School District. P. Stephen DiJulio
15		drafted Resolution 1669 at the request of the Kent School District (and not at the request of the Board); the Board does not currently have
16		independent legal counsel. <sup>62</sup> School boards have the responsibility of the final setting of policy, per Washington law.
17		"This resolution simply creates a program and policy for the
18		management of guidance to the negotiators on behalf of the district."
19		"One of the advantages that the committee does is that <u>it</u> demonstrates to all the unions that the labor negotiator has at
20		least a majority of the board supporting it when it comes to the table."
21		YouTube Link (February 28, 2024 regular meeting):
22		https://www.youtube.com/watch?v=zHLKuztB93k.
23		2:38:40 – 4:10:24 – Director Cook's testimony and the discussion of Resolution 1669 by the Board
24		

<sup>62</sup> One of Paul Brachvogel's last Public meetings as General Counsel for the KSD was on March 13, 2024. Since then, Curtis Leonard (outside counsel from Pacifica law firm) has appeared at meetings on behalf of the District and its Board. The Board has the final responsibility for the setting of policies, among other things—the District does not. The Board and the District's interests are not aligned on all matters, as Mr. Leonard has claimed during discussions at multiple Public meetings of the Board and during the April 17, 2024 board governance retreat—which was video recorded by a member of the Public and posted to YouTube at <a href="https://www.youtube.com/watch?v=9qRFeZ-dE4M">https://www.youtube.com/watch?v=9qRFeZ-dE4M</a>.

26

1	DATE	TIMELINE / EVENT DESCRIPTION
2		2:02:37 – 2:38:30 – In-person and online comments of the community (all public comments submitted by the community stakeholders were against the passage of Resolution 1669).
3		Agenda for Meeting:
4		https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=D2R22X8 35A52
5 6		Resolution 1669: https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D2UN6A5E5D50/\$file/Resolution%201669%20-%20Labor%20Policy%20Committeepdf
7		Approved Minutes for the Meeting (Agenda Item 5.07):
8		https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D36UVF7DE367/\$file/Board%20Minutes%202024%2002%2028.pdf
9		Attached to the February 28, 2024 meeting minutes (disclosed due to a concern of OPMA due to all Board members on email), is this
10		email that paints the picture of a toxic Board (the hostile majority).
11		See attachment to meeting minutes at: https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/D36UVF7DE367/\$f
12		ile/Board%20Minutes%202024%2002%2028.pdf
13		From: Song, Andy < <u>Andy.Song@kent.k12.wa.us</u> > Sent: Thursday, January 25, 2024 5:27 PM
14		To: Cook, Donald < <u>Donald.Cook@kent.k12.wa.us</u> >; Vela, Israel < <u>Israel.Vela@kent.k12.wa.us</u> >; Margel, Meghin < <u>Meghin.Margel@kent.k12.wa.us</u> >; Farah, Awale < <u>Awale.Farah@kent.k12.wa.us</u> >; Zantello, Naomi < <u>Naomi.Zantello@kent.k12.wa.us</u> >; Clark, Timothy < <u>Timothy.Clark@kent.k12.wa.us</u> >
15		Subject: Checkin in
16		Hello Board, Superintendent, and Naomi,
17		I wanted to take a moment to reflect on the unfortunate news that I am not a part of the collective group as directors. This came as a shock, as the sentiments were expressed as the board being a collaborative collective of 5. However, as stated by Director Clark, the "3" on this side of the aisle, did not include myself or director
18		cook. It's unfortunate that I had to learn about this division within our team during a public meeting, but understand that the 3 other directors, excluding myself and director cook, are comfortable with creating division and subgroups when we should be working as a collective of 5.
19		With this information, I will be operating in the best interest of the students, families, communities, and KSD affiliates. My methods may not be in alignment with the other side of the aisle, as stated on record, so I
20		presume that means I must engage in more independent work than anticipated, within the guidelines and policies of my rights, privilege, and responsibilities. This is just a notice for transparency, which is the least I can
21		do since Director Clark was honorable enough to be transparent with me during our last session.
22		
23	February 28, 2024	YouTube Link (February 28, 2024 regular meeting): https://www.youtube.com/watch?v=zHLKuztB93k
24		<u>2:38-40</u> – <u>4:10:24</u>
25		Timestamps of various discussion points:
26		2:40:00 – Director Song asks why Director Cook opposes Resolution 1669
27		

1	DATE	TIMELINE / EVENT DESCRIPTION
2		2:42:00 – Board President Margel calls a recess when Director Cook states that he tried to bring the matter to the Public
3 4		• <u>2:59:24</u> – Margel says "what we don't do is choosing unilaterally to bring into the public; make a wall; not for just one union but all; fiduciary to taxpayers
5		• <u>3:03:23</u> – Margel – process; bring out of executive session; how get on agenda; the resolution is a product (not private, the
6 7		product of work, doesn't contain the ins and outs); fiduciary duty; one pot of money; doesn't preclude vote, only precludes the conversation behind closed door
8		• 3:10:50 – Why ended up in executive session in the first place – RCW 42.30.110(i)(3) – litigation or potential litigation, litigation or risk of proposed legal or financial risks
9		• 3:15:35 – adverse legal or financial consequences; risks in memo
10		• 3:16:42 – Song says not as productive (as could be); are we
11		confident only solution / explored all options, are we open to other; question directed to Vela; Song not involved in discussion
12		of other discussion; Vela attorney client privilege; subgroups are standard; Margel - we're allowed to make a subcommittee
13		• <u>3:19:37</u> – Introduction of P. Stephen DiJulio
14		<ul> <li>3:22:31 – DiJulio / other alternatives (superintendent meets with individual board members</li> </ul>
15 16		<ul> <li>3:25:16 – Cook question for DiJulio, response is "no legal reason to do it" – the Board is choosing to do it; resolution doesn't stop cook from voting;</li> </ul>
17		• <u>3:26:49</u> – DiJulio - not involved in the sausage-making
10		• 3:28:20 – Song wants to hear from unions
18		• 3:29:48 – Interaction with Daman Hunter (HR) – his comment is strangely worded re labor partners and the District "would
19		welcome any partnering" with unions (re Resolution 1669)
20		[District leadership had already said they had done that—alluding to the idea that unions support Resolution 1669, when
21		they actually didn't support it—the District lied or at the very least misinformed the Public and Director Cook]
22		• 3:31:22 – Daman Hunter still at dais, BP Margel comments re
23		wall; sausage-making, she asks Mr. Hunter re reaction from other unions – Mr. Hunter says "I don't know what this means for
24		other labor unions, but again, we welcome any partnership" and "he doesn't know the answer for that question" (meaning the
25		KSD hadn't actually received any backing from the unions for Resolution 1669, despite having claimed otherwise previously)
26		• 3:32:18 – Superintendent Vela "what we heard from Mr. Hunter is that his part of our process that we normally do related to this is work with a partner from our labor groups." Tabling this and
27		is work with a partner from our labor groups." Tabling this and

,	DATE	TIMELINE / EVENT DESCRIPTION
1		hearing from them (the union), that's a whole different aspect of
2		what's on the motion that has been made and seconded." Then Margel talks about the procedural aspects of the motion.
3		• 3:33:16 – Director Farah one pot of money, the Resolution is for
4		the optics; circling the subject, Director Farah gets heated; Board President Margel tells him to stop at 3:34:20.
5		• <u>3:34:27</u> – Board President Margel admonishes the Public in attendance at the meeting "we need you quiet"
6 7		3:35:08 – After Director Clark says the Resolution gives the Board a process to deal with the conflict, Director Cook asks "why do we believe we are smarter than WSSDA?" (re KSD BP)
8		1610); he asks why does the Board needs to go beyond what WSSDA and the Legislature provide
9		3:35:52 – Director Cook reached out to the legal team at WSSDA
10		3:36:36 – Director Cook asked WSSDA have they ever seen
11		anything like this (Resolution 1669) in the State of Washington—the person he spoke with laughed and said no
12		<ul> <li>Resolution 1669 hinders Director Cook's ability to provide oversight as a Director of the District</li> </ul>
13		3:38:19 – Margel lists the reasons for supporting Resolution
14 15		1669 (protect the process, have a wall, protect info that has not been protected, one union has more protection than others), and states Director Cook will still have the vote, will still have the info (despite them excluding Director Cook from closed
16		sessions)
17		• 3:41:57 – Margel "comfortable with it"
18		• 3:42:11 – Cook asks about Section 4 – enumerates all the people involved on the committee (includes "Board President") – he asks the valid question of "what happens if I become President"?
19		Not written appropriately
20		• <u>3:43:12</u> – Director Song asks what are the Board's thoughts regarding other leaders, alternatives, and hearing from union
21		leaders
22		• <u>3:44:48</u> – Margel says they are provided a legal remedy and able to do this; fairly common practice; Paul Brachvogel introduces P. Stephen DiJulio (attending remotely) to discuss what alternatives
23		there are
24		DiJulio shares one alternative – superintendent can meet with individual Board members (to learn their position on bargaining metters).
25		matters)  ■ 3:46:07 – 3:50:20 – Recess
26		• 3:51:44 – Back from Recess, DiJulio furthers his point
27		<ul> <li>Decision by Board how to manage internally</li> </ul>

1	DATE	TIMELINE / EVENT DESCRIPTION
		<ul> <li>Setting parameters for managing internally</li> </ul>
2		<ul> <li>Matters for district not favorable to one union over the other</li> </ul>
4		<ul> <li>Other ways? Sure – the Board chose transparent policy</li> </ul>
5		<ul> <li>Main way would be superintendent would need to meet with each board member (re an alternative)</li> </ul>
6		<ul> <li>This is a way to do it</li> </ul>
7		3:57:40 – Director Song re whether alternative options have been explored – motion made to table to Executive Session (motion fails)
8		• <u>3:59:50</u> – remedy set for by law
9		<ul> <li>4:02:00 – Director Song is saddened by the response from his fellow Board Members; differing opinions</li> </ul>
10		<ul> <li>4:04:11 - 4:07:31 - Spouse on executive board; plans to remain on board</li> </ul>
11		• 4:07:32 – she's not on bargaining team
12		• 4:08:00 – motion for tabling (vote fails)
13		• 4:09:28 – Director Cook to Director Margel – you don't want to hear from unions? ["we've heard enough"] – Margel proceeds to
14		vote
15	March 7, 2024	Paul Brachvogel memo to Superintendent Vela.
16		See EXHIBIT 17 (Paul Brachvogel Memo to Superintendent Vela re Censure of Director Cook); related to Resolution 1669.
17	March 7, 2024	Conforming with KSD Resolution 1641, Recall Petitioner Greta Nelson
18		(a community stakeholder) presented valid issues of concern regarding Resolution 1669, including a demand for the immediate suspension of Resolution 1669, to the KSD Board and Superintendent Vela via email.
19		See EXHIBIT 7 (March 7, 2024 Email). The email specifically demands that Board President Margel (Ms. Nelson's district representative on the
20		Board, District 2) put forth a motion to rescind Resolution 1669 for the next regular meeting of the Board.
21		See KSD Resolution 1641—Revised Protocol Guidelines; KSD BP 1420
22	March 11, 2024	Paul Brachvogel emails the March 7, 2024 legal memo to a student, with
23		a cc: to Public Records Officer Dawn Marie Boster regarding Resolution 1669 and censure of Director Cook.
24		See EXHIBIT 17 (Paul Brachvogel March 7, 2024 Memo to
25		Superintendent Vela re Censure of Director Cook); related to Resolution 1669.
26	March 13, 2024	Greta Nelson made a public comment at a regular meeting of the Board. See EXHIBIT 8 (March 13, 2024 Greta Nelson Public Comment).
27		

DATE	TIMELINE / EVENT DESCRIPTION
DATE	See also Kent School District regular meeting of the board on March 13,
	2024 at https://www.youtube.com/watch?v=TuiN95376u8. There was lengthy discussion at this meeting about Resolution 1669.
	Discussion of the Resolution is at
March 14, 2024	Legal Update Memo.
	Paul Brachvogel sends email to Public Records Officer Dawn Marie Boster with March 14, 2024 memo intended for Superintendent Vela.
	See EXHIBIT 17 (Paul Brachvogel March 14, 2024 Memo to Superintendent Vela)
March 19, 2024	Greta Nelson emailed the Board and Superintendent again, after no
	action was taken by the Board at the March 13 regular meeting, again requesting the immediate suspension of Resolution 1669, and providing
	various corrective actions (a "notice of cure") that could have been taken by the KSD Board and Superintendent, in order to prevent litigation
	regarding a resolution that is in conflict with Washington law and public policy.
	Ms. Nelson recognized the KSD Board's immediate need for independent legal counsel, particularly in the instance of a Superior
	Court challenge to a Board policy (Resolution 1669) that was in direct conflict with Washington law and public policy. She created a draft
	"Resolution X" for the purpose of creating a Board policy for the provision of independent legal counsel for the current and any future Board of Directors for the KSD.
	See EXHIBIT 9 (March 19, 2024 Email to KSD Board and Superintendent).
March 19, 2024	Greta Nelson publicly shared her March 19 email she had sent to the
	KSD Board and Superintendent Vela in a community discussion forum regarding the Kent School District on Facebook, in an effort to keep the
	community informed of her actions and her intent for transparency regarding them.
	See EXHIBIT 10 (March 19, 2024 Greta Nelson Facebook Post to KSD Community).
March 23, 2024	Director Cook posts on FB – Email to Margel re Resolution 1669
	suspension and Resolution X. Board Director Donald Cook emailed all Board members on March 23, 2024 to specifically request that Board
	President Margel add to the agenda for the next Board meeting, the suspension of Resolution 1669, as well as to add a new "Resolution X" to the agenda that allows for the provision of independent legal counsel
	for the Board, separate of the District, but paid for by the District.
	See EXHIBIT 11 (Email from Donald Cook to all Board Members).
March 27, 2024	At the March 27 regular meeting, during her public comment to the Board, Greta Nelson provided verbal notice to the Kent School District

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1	DATE	TIMELINE / EVENT DESCRIPTION
2		incurring the significant costs of retaining legal counsel in order to be successful.
3	March 30, 2024	Ms. Nelson and Director Cook corrected their error in formal written notice being provided to the Board Secretary via email.
5	May 8, 2024	During the public comment section of the agenda at this regular meeting of the KSD Board, Layla Jones, Vice President of Kent Education
6		Association introduced the newly formed <b>Kent Labor Alliance (which includes all but unions except for the Principals union, which wasn't asked to join)</b> to the KSD Board and Public—they went up to the
7		podium as a group to collectively provide their statement.
8		All KLA representatives present stated or affirmed that their respective union had not been approached by KSD leadership regarding Resolution 1669 and Director Cook's participation in bargaining matters at all—or
		if their union had been approached, its leadership did not take issue with
10		Director Cook's participation in bargaining so long as there was a recusal for KEA's contract as is required by law. Director Cook has
11		stated that he would recuse himself from the KEA contract per the requirements of law.
12		Layla Jones (KEA Vice President)
13		Dan Rasia (KAP Vice President)
14		Darren Blackwell (AFT)
		Debbie Mathes (KSFSA President)
15		Tim Martin (KEA President)
16		David Morrison (AFSCME President) – was approached, but didn't see any issue
17		Darren Garrett (AFT President)
18		Tricia Garcia (KAEOP President)
19		YouTube Link: https://www.youtube.com/watch?v=gYWpAL5qefA  Public Comment by Kent Labor Alliance at: 1:49:45 – 1:52:50
20		
21	May 22, 2024	During the public comment section of the agenda at this regular meeting of the KSD Board, Layla Jones, Vice President of Kent Education
22		Association, introduced the public comment of the <b>Kent Labor Alliance</b> and the group appeared together at the podium to read aloud its letter
23		and vote of no confidence in Superintendent Vela and Board President Margel—they collectively asked for the Superintendent and Board President to voluntarily resign. The letter called out Resolution 1669
24		specifically.
25		The group enumerated a variety of concerns—including that they were refuting the prior comments and misinformation attempts made by the
26		District that union leadership had been consulted regarding Director Cook's potential conflict in collective bargaining with the District.
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DATE	TIMELINE / EVENT DESCRIPTION
	See EXHIBIT 5 (May 22, 2024 Kent Labor Alliance Vote of No Confidence).
	YouTube Link: https://www.youtube.com/watch?v=eT5NfRdBIKI
	Public Comment by Kent Labor Alliance at: 2:33:37 - 2:38:00
Early June 2024	The District suggested to WEA Uniserv Representative Christie Padilla that Resolution 1669 would be repealed if the KEA union settled the contract on behalf of its members before the 2023-2024 school year was out (June 14, 2024).
	See EXHIBIT 16 (September 3, 2024 Declaration of Christie Padilla re Resolution 1669).
June 13, 2024	Greta Nelson and Director Cook attend Ex Parte Temporary Restraining Order Hearing (in an attempt to restrain the KSD from enforcing Resolution 1669); TRO denied, but the previously set June 27 hearing on Order to Show Cause why preliminary injunction should not issue was allowed to proceed.
	As of the date of this hearing, the KEA and Teamsters unions were both in bargaining with the Kent School District; Director Cook was excluded from all bargaining closed sessions of the Board.
June 17, 2024	Tentative Agreement reached between KEA and KSD (the CBA for certificated teachers in the district).
	The Teamsters union also reached a Tentative Agreement around this same time (just prior to KEA).
	The District provided both unions with everything they asked for, in order to settle quickly, before the June 27 preliminary injunction hearing in the Resolution 1669 litigation (so that it could claim that there was no need for a preliminary injunction as "no bargaining would be occurring for some time" as the District claimed in its Motion to Dismiss briefing.
June 26, 2024	KSD Board votes on KEA Collective Bargaining Agreement (CBA) 2024-2027.
	Board also votes to approve International Brotherhood of Teamsters, Public, Professional & Office-Clerical Employes and Drivers Local Union No. 763 Collective Bargaining Agreement (CBA) 2024-2027.
	Director Cook was excluded from collective bargaining closed session meetings discussing/deliberating this contract, despite no conflict with the Teamsters contract.
	Agenda Item: https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=D5JQZQ 6B1AB7
June 27, 2024	Hearing on Order Show Cause (Motion for Preliminary Injunction); preliminary injunction denied by Judge Straley.

1	DATE	TIMELINE / EVENT DESCRIPTION
2	July 2024	Greta Nelson and Director Cook continue search for legal counsel.
3	August 2, 2024	Letter from Counsel for District to Greta Nelson and Director Cook, demanding voluntary dismissal with prejudice. See EXHIBIT 14
4		(August 2, 2024 P. Stephen DiJulio Letter on Behalf of Defendants to Director Cook and Greta Nelson in Resolution 1669 Litigation).
<ul><li>5</li><li>6</li></ul>	August 8, 2024	Legal counsel obtained by Ms. Nelson and Director Cook; Lara Hruska appears informally to P. Stephen DiJulio via email.
7 8 9	August 9, 2024	Email between counsel. The District had an opportunity to enter into a stay of proceedings in the litigation, in an effort to de-escalate and to allow the parties time to mediate the remaining disputes. "Clients are advised" (DiJulio). See <b>EXHIBIT 15</b> (August 8 and 9 email exchange between Lara Hruska and Mr. DiJulio).
10		Board President Margel (a named party to the litigation) did not provide the details of the settlement offer to the full Board. Violation of BP 1220 (she is required to provide all correspondence that she receives, to her fellow Board members).
12 13 14 15		See October 9, 2024 regular meeting of the Board and statements made by Board President Margel and outside legal counsel Curtis Leonard on negotiating solely with Margel (and not the full Board)—it is clear that Board President Margel's discretionary acts on behalf of the Board, are being done without the full authority and approval of the Board. Ms. Margel has no greater authority individually, than that of her fellow Board members.
16	August 9, 2024	Motion to Dismiss filing by the District.
17 18	August 12, 2024	Service on Board President Margel by process service; service by Legal Messenger delivery on Foster Garvey; failed attempt on service of District at admin offices; failed attempt on service to Vela at District and at home.
20	August 13, 2024	Successful process service on the District at KSD Administrative Office building; failed service attempt on Superintendent Velat at the KSD's administrative offices.
21   22		Various attempts were made to evade service (the District and Superintendent Vela).
23		See EXHIBIT 34 (Email Between Counsel re Process Service in Resolution 1669 Litigation).
24	August 14, 2024	Successful process service on Superintendent Vela in public, at a regular meeting of the Board at KSD Administrative Office building.
25 26	September 6, 2024	Motion to Dismiss hearing.

1	DATE	TIMELINE / EVENT DESCRIPTION
2	October 2, 2024	Orders dismissing (with prejudice) both Ms. Nelson's and Director Cook's cases. Ms. Nelson's case was going to be dismissed regardless,
3		but a Motion for Reconsideration was entered for Director Cook's case, which was denied—so his dismissal was appealed to the Court of
4		Appeals, Division I. Director Cook's case was dismissed on a procedural technicality related to whether substantial compliance in notice to the
5 6		district is adequate for the case to proceed on the merits. [At the time of filing, Ms. Nelson and Director Cook were not represented by counsel.]
7		Status of the "Resolution 1669 Litigation." Judge Straley entered two orders on October 2nd—(1) Order Granting Defendants' Motion to
8		Dismiss, and (2) Order Denying Plaintiffs' Motion for Leave to Amend Complaint. See KCSC Case No. 24-2-06877-5 KNT.
9		Ms. Nelson's part as a Plaintiff in the Resolution 1669 litigation was going to be dismissed regardless, as a concession that her status as an
10		"aggrieved" member of the Public is not any more different or unique than that of any other member of the Public. That doesn't mean
11		members of the Public lack standing regarding improper Board action, though—members of the Public have the ability to take collective
12		action—either in the form of a class action lawsuit, or by submitting a petition for recall of school board members for the purpose of obtaining an order of sufficiency for the recall from a Superior Court Judge. Once
13 14		an order of sufficiency is obtained, the Public would then be required to gather enough signatures to put the board recall up for a special election.
15		Director Cook, on the other hand, is uniquely aggrieved by a majority of the KSD Board enacting Resolution 1669 and creating a Labor Policy
16		Committee which improperly excludes him from meetings of the Board and provides broad authority to unelected District officials.
17	October 9, 2024	With no advance written notice to the Public, a majority of the Board in attendance suspend or repeal Resolution 1669 effective immediately.
18		Board President Margel and Director Clark violate KSD Board Policy 1320 (Suspension of a Policy) and Protocol Guidelines (Resolution
19		1641)—the proposal was <u>not</u> made in writing in advance of the meeting, and there was no unanimous vote of all board members present; the
20   21		suspension of Resolution 1669 was brought up unexpectedly and without written notice to the Public to allow time for the Public to
22		provide written comment. It is undisputed that the Resolution needed to be suspended, but the manner in which it was done was not transparent to the Public and was in violation of the <u>Chapter 42.30 RCW</u> and <u>BP</u>
23		1400; no explanation was provided and no emergency existed.
24		Agenda Item 7.06 – Repeal of Resolution 1669 effective immediately  Agenda Item 7.07 – Motion by Director Cook to have Legal Fees Paid
25		re Resolution 1669
26	October 11, 2024	Motion for Reconsideration.
27	October 30, 2024	Order denying Reconsideration.

DATE	TIMELINE / EVENT DESCRIPTION
November 1, 2024	Notice of Appeal to Court of Appeals, Division I.
	Greta Nelson and Donald Cook, Appellants v. Kent School District No. 415, et al., Respondents – Case No. 874811
	Lara Hruska and Luke Hackenberg of Cedar Law PLLC see the merits of Director Cook's case, will continue to assist—they submitted a Notice of Appeal to the Court of Appeals, Division I.
	It will now be up to the Washington State Court of Appeals, or the Washington Supreme Court, to decide whether substantial compliance in notice to the District is adequate for the case to proceed.
	If Director Cook is successful with his appeal of Judge Straley's decision, his case would likely be kicked back to King County Superior Court and allowed to proceed through the discovery phase and onto trial.
December 11, 2024	Recall Petitioner Greta Nelson attended regular meeting of the Board and provided a Public comment; followed by an email to provide the full comment (as it was cut off by the time restraint of 3 minutes). Highlighted the improper suspension of a policy to the Board.
	See EXHIBIT 33 (December 11, 2024 Greta Nelson Email to KSD Board).
	pard Recall Website—News Articles Regarding Resolution 1669 and natters Relating to this Recall Petition on Media Page.
A collection of	news articles regarding matters relating to this Recall Petition (including
the Resolution 1669 lit	igation) are linked on the media page of the "KSD Board Recall" website

the Resolution 1669 litigation) are linked on the media page of the "KSD Board Recall" website (www.ksdboardrecall.com).

More information will be posted on the KSD Board Recall website if an order of sufficiency is obtained and the Recall Petition is allowed to move forward to the signature gathering stage.

#### VI. **CHARGE ONE**

(Abuse of Authority and Creation of Improper Committee)

Board Director Clark committed acts of misfeasance, malfeasance, and/or violated his oath of office as identified in Sections III, IV, V and VI herein.

Lack of Decorum and Civility on the Dais; Board Director Clark Unfit for A. Role on KSD Board.

As a practical matter, Board Director Clark is unfit for the role of KSD Board Director he should be removed from his Board position given his lack of civility and decorum on the dais

PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT SCHOOL DISTRICT NO. 415 - 49

RECALL PETITIONERS GRETA NELSON MICHELE BETTINGER LORI WAIGHT

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to his fellow Board Directors, Donald Cook and Andy Song. Case in point—the February 28, 2024 meeting where Resolution 1669 was enacted. He exhibited open hostility and disdain for Director Cook and his questioning of the adverse action being taken against him, as well as for Director Song who made several attempts to de-escalate the conversation and to table the discussion to allow for more time for the KSD Board to hear from union leaders before taking final action.

### **B.** Abuse of Authority.

Recall Petitioners contend that before the first meeting of any committee created by the Board for the District can be attended by any of its proposed members, *the construct of that committee must follow existing law* provided to special purpose districts by the Washington Legislature *and the Board's own policies* for the creation of committees of the Kent School District. The creation of the committee and the steps the Board took to get there, were an abuse of authority.

No closed session of the Labor Policy Committee should have occurred that also excluded Director Cook (in addition to the Public)—because the creation and basic construct of the committee broke the law. It doesn't matter that collective bargaining discussions are an exception to the OPMA. The Labor Policy Committee (containing a quorum of Board members) wasn't legal from its inception, so no closed meetings of that committee should have ever occurred (but closed meetings excluding Director Cook did occur in 2024, as a result of the actions of Directors Margel, Farah, and Clark, Superintendent Vela, as well as legal counsel Paul Brachvogel and P. Stephen DiJulio).

## C. Improper / Overbroad "Resolution 1669."

Resolution 1669 is improper, overbroad, not transparent to the Public, is not well-defined, and creates a Labor Policy Committee of the Board that goes beyond any authority provided to the KSD Board by the Washington Legislature.<sup>63</sup>

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66 See also RCW <u>28A.343.390</u>, <u>AGO 2006 No. 6</u>, <u>AGO 1986 No. 16</u>.

PETITION FOR THE RECALL OF A BOARD DIRECTOR

OF KENT SCHOOL DISTRICT NO. 415 - 51

While cities and counties exercise general governmental authority, *special purpose* 

Special Purpose Districts Cannot Create Committees that Contain a Quorum

their jurisdiction. Special purpose districts are authorized by state legislation and are municipal corporations.<sup>64</sup> Special purpose districts are subject to limitations expressly or implied by state

districts are created for a particular purpose and their powers are limited to those areas within

corporations. \*\* Special purpose districts are subject to limitations expressly or implied by stat law. 65

E. Resolution 1669 Created a Labor Policy Committee of the Kent School District that Contained a Quorum of Board Members.

The majority vote of Directors Margel, Farah, and Clark and the enactment of Resolution 1669 on February 28, 2024 resulted in the KSD Board's creation of a "Labor Policy Committee" going against KSD <u>BP 1240</u> and <u>BP 4110</u> which state that only two Board Directors may participate in any committee of the District.<sup>66</sup>

F. Improper Delegation of Authority to Unelected Municipal Officers, and Exclusion of Director Cook from Meetings of the Board.

Resolution 1669 caused the improper delegation of authority provided by the electorate and the Washington Legislature to Donald Cook—to unelected municipal officers of the District. The delegation of this authority was well outside of the scope allowed for special purpose districts within Washington State and a gross abuse of authority by a hostile majority of the KSD Board—and in particular, by Board President Margel and the Board's Secretary, Superintendent Vela, and the District's legal counsel, Paul Brachvogel, Curtis Leonard, and P. Stephen DiJulio.

As stated in 42 Am.Jur., Public Administrative Law § 73, "It is a general principle of law, expressed in the maxim 'delegatus non potest delegare,' that *a delegated power may not be further delegated by the person to whom such power is delegated*. Apart from statute, whether

65 See Snohomish County v. Anderson (1904) and Massie v. Brown (1974). Emphasis added.

<sup>&</sup>lt;sup>64</sup> See Lauterbach v. Centralia (1956); King County Water District No. 54 v. King County Boundary Review Board (1976). (Quoting MRSC: Knowing the Territory, p. 1.) Emphasis added.

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1	administrative officers in whom certain powers are vested or upon whom certain duties are	
2	imposed may deputize others to exercise such powers or perform such duties usually <i>depends</i>	
3	upon whether the particular act or duty sought to be delegated is ministerial, on the one hand,	
4	or on the other, discretionary or quasi-judicial. Merely ministerial functions may be delegated	
5	to assistants whose employment is authorized, but there is no authority to delegate acts	
6	discretionary or quasi-judicial in nature" AGLO 1974 No. 91. Emphasis added. See also	
7	AGO 2006 No. 6, at 2 (citing <i>In re Recall of Beasley</i> , 128 Wn.2d 419, 908 P.2d 878 (1996)—	
8	(council members are taking action where they deliberate or discuss a decision they might	
9	eventually make).	
10	G. Improper Exclusion of Director Cook from Meetings of the Board; Director	
11	Cook's Right and Authority to Participate in All Meetings of the Board (as well as Participating in All Actions—not just Final Actions—of the KSD	
12	Board, as Allowed by Existing Law and Board Policy.	
13	Resolution 1669 improperly excluded a duly elected Board Director from participating in	
14	meetings of the KSD Board and from developing bargaining parameters for the District to	
15	operate in labor bargaining with unions.	
16	Per KSD BP 1220, "the authority of individual board members is limited to	
17	participating in actions taken by the board as a whole when legally in session." Board Policy	
18	1220 does not state that a board member is limited to taking <i>final action</i> (nor could it state that,	
19	because that would be outside of the scope allowed for special purpose districts). Each member	
20	is obligated to attend board meetings regularly (closed sessions are board meetings).	
21	The Board, at the advice of District counsel, have inappropriately removed Director	
22	Cook's ability to participate in actions taken by the Board in closed meetings (the closed	
23	sessions he was excluded from in 2024) that he is now and was then obligated to attend	
24	through his duty to the Public and oath of office.	
25	Resolution 1669 is contrary to <u>KSD BP 1220</u> and Washington law. Despite its own	
26	policy stating otherwise, the District and its legal counsel are operating on the belief that only	
27	final action matters in its ability to enforce Resolution 1669 against Cook—as they have	
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claimed in Public meetings of the KSD Board, in materials provided to the Public, and in the Resolution 1669 litigation.

Per RCW 28A.320.040, a Board has the power to make bylaws that are "not inconsistent with the provisions of this title". Per RCW 28A.150.230, a board director is to be held accountable for the proper operation of their district to the local community and its electorate. Resolution 1669 is inconsistent with the provisions of Title 28A.

Because Resolution 1669 was enacted by the Board, *Director Cook is now "held*" accountable" for the actions taken by others in closed sessions despite not participating in *those closed sessions himself*, due to the Resolution's exclusion of his elected role in closed sessions. Director Cook cannot and should not be held accountable for the actions of others in which he does not participate, and his conflict with one union (KEA) does not apply to the other unions that bargain with the District.

Per RCW 42.52.010 (Ethics in Public Service), "participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise.

H. Director Cook's Court of Appeals, Division I Case is Pending (Opening Brief Due March 17, 2025).

Director Cook's appeal of the dismissal of his KCSC appeal of Board action is currently pending in the Court of Appeals, Division I. Given that Director Cook's case was not heard on the merits of his case due to a procedural technicality, it is likely that the case will eventually be kicked back to King County Superior Court and allowed to proceed towards trial. The Court of Appeals Opening Brief on behalf of Donald Cook is due to be filed on March 17, 2025. See COA, Div I, Case No. 874811.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		13. We agree to follow the process of adding items to the agenda,
3		instead of bringing it up unexpectedly.  14. Reports to the board will focus primarily on accountability to the
4		Board and District Goals. 15. Per RCW 28A.343.400 and Policy 1733, board directors will
		receive compensation for conducting business on behalf of Kent
5		School District. Any director may waive all or any portion of his or her compensation.
7	BP 1000	LEGAL STATUS & OPERATION
8		The Board of Directors of the Kent School District #415 is the corporate entity established by the state of Washington to plan and direct all aspects of the district's operations to ensure quality in the content of the district's educational program and provide students with an opportunity
		to achieve those skills recognized as requisite to learning.
10 11		Kent School District's Board of Directors believe that community input is important; therefore, opportunities for community input will be provided.
12 13		The policies of the Board define the organization of the Board and the manner of conducting its official business. The board's operating policies are those that the Board adopts from time to time to facilitate the performance of its responsibilities.
14		Organization
15 16		The corporate name of this school district is Kent School District No. 415, King County, State of Washington. The District is classified as a first-class district and is operated in accordance with the laws and regulations pertaining to first-class districts.
17		In order to achieve its primary goal of providing each child with the
18		necessary skills and attitudes, commensurate with his/her ability, to become effective citizens, the Board will exercise the full authority
19		granted to it by the laws of the state. Its legal powers, duties, and responsibilities are derived from state statute and regulation. Sources
20		such as the school code (Title 28A RCW), attorney general's opinions and regulations of the State Board of Education (Title 180 WAC), and the State Superintendent of Public Instruction (Title 392 WAC) delineate
21		the legal powers, duties, and responsibilities of the Board.
22		Number of Members & Terms of Office
23		The Board will consist of five members, elected by ballot by the registered voters of the district. Except as otherwise provided by law,
24		board members will hold office for terms of four years and until their successors are elected and qualified. Terms of board members shall be staggered as provided by law.
25		Newly elected directors will take office at the first regular meeting of the
26		board of directors after the election results have been certified by the county auditor. Prior to beginning their term, directors will take and subscribe to an oath of office.
27		subscribe to an oath of office.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Legal
3		RCW 28A.150.230 District school directors' responsibilities RCW 28A.300.065 Classification and Numbering System of School Districts
4		RCW 28A.315.035 Organization of School Districts
		RCW 28A.320.010 Corporate Powers RCW 28A.320.020 Liability for Debts and Judgments
5		RCW 28A.320.040 Directors — Bylaws for board and school government RCW 28A.343.300 Director — Terms — Numbers
6		RCW 28A.343.320 Directors - Declaration of Candidacy RCW 28A.343.330 Directors - Ballots - Form
7		RCW 28A.343.360 Directors - Oath of Office RCW 29A.60.270 Local officers, beginning of terms — Organization of district boards of
8		directors RCW 29A.60.280 Local elected officials, commencement of term of office — Purpose
	DD 1000	
9	BP 1002	CODE OF ETHICS AND STANDARDS
10		The board of directors, as independently elected officials, recognize and accept the responsibility of the role and personal authority to act only
11		within the school district's structure and the federal and state laws of the United States and State of Washington.
12		Based on the Washington School Board Standards of Values and Ethical behavior included in the Washington State School Directors'
13		Association publication Washington School Board Standards, board members agree to the following guidelines:
14		Standard 1. Values and Ethical Behavior
15		To be effective, an individual school director:
16		a. Places students' needs first.
17		b. Demonstrates commitment to equity and high standards of achievement for each student.
18		c. Commits to treating each individual with dignity and respect.
		d. Models high ethical standards.
19		e. Advocates for public education.
20		Standard 2. Leadership
21		To be effective, an individual school director:
22		a. Contributes to thoughtful governance discussions and decisions by being well informed, open-minded and deliberative.
23		b. Understands that authority rests with the board as a whole and not with individual directors.
24		c. Is able to articulate and model appropriate school director roles and responsibilities.
25		d. Actively participates in school director duties and responsibilities.
26		e. Demonstrates group membership and leadership skills, working within the board structure.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		f. Respects the board's role in policy making and supports all adopted board policies.
3		Standard 3. Communication
4		To be effective, an individual school director:
5		a. Builds and maintains positive connections with the community and staff.
6		b. Communicates accurately and honestly, with awareness of the impact of his/her words and actions.
7		c. Listens carefully and with an open mind.
8		d. Maintains civility and treats all people with respect.
9		e. Maintains confidentiality of appropriate matters.
		f. Refers and guides people with concerns to appropriate staff.
10		g. Welcomes parent, student and community input.
11		Standard 4. Professional Development
12		To be effective, an individual school director:
13		a. Commits the time and energy necessary to be informed and competent.
14		b. Keeps abreast of current issues, research, applicable laws, regulations, and policies that affect public education.
15		c. Participates in professional development, individually and with the board/ superintendent team.
16		Standard 5. Accountability
17		To be effective, an individual school director:
18		a. Is accountable to the community.
		b. Takes personal responsibility for his/her own words and actions.
19		c. Respects and abides by board decisions.
20		d. Meets expectations for transparency, including disclosing potential conflicts of interest and refraining from discussing or voting on those
21   22		issues.  e. Complies with board policies/procedures and the law.
	BP 1220	BOARD OFFICERS AND DUTIES OF BOARD MEMBERS
23	<u> </u>	"The authority of individual board members is limited to participating in
24		actions taken by the board as a whole when legally in session. Board members will not assume responsibilities of administrators or other staff
25		members. The board or staff will not be bound in any way by any
26		action taken or statement made by any individual board member except when such statement or action is pursuant to specific instructions and official action taken by the board."
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Board President Margel and Superintendent Vela directed legal counsel from Foster Garvey to draft the Foster Garvey Memo due to a personal
3		agenda against Director Cook—this was not at the direction of the Board. The Board President chose to take unauthorized Board action
4		without specific instruction to do so by the Board. The Board President has no greater authority than other individual Board members, other than
5		that which is granted to the Board President by the full Board.
6	<u>BP 1240</u>	COMMITTEES
7		"The Kent School District Board of Directors values input from the larger Kent School District community and is interested in hearing comments firsthand. Board Directors interested in being observer
8 9		participants in these committee meetings will be determined by a majority vote of the board. The board will discuss who will attend such
10		committees, and assignments will be made under a Discussion and Approval agenda item during a regular board meeting. No more than two board members will participate in any district committee.
11		Board members who are present at district committee meetings will
12		attend in an "at large" capacity as listeners and observers only, and then report back to other board members during the directors' board reports section of the regular meeting agenda."
13		The Labor Policy Committee created by Resolution 1669 contained four
14 15		(4) KSD Board Members—three or more members is a quorum of the KSD Board and is not allowed in Washington State for special purpose districts such as a school district.
16	BP 1310	POLICY ADOPTION
17		"Proposed new policies and proposed changes in existing policies
18		will be presented in writing for reading and discussion. Unless the board determines that immediate action would be in the best interests of
19		the district, the final vote for adoption will take place not earlier than the next succeeding regular or special board meeting.
20		Any written statement by any person relative to a proposed policy or amendment should be directed to the board secretary prior to the second reading. The board may invite oral statements from staff members or
21		community members as an order of business.
22		When the board is considering a district policy or amendment to policy that is not expressly or by implication authorized by state or federal law,
23		but which will promote the education of kindergarten through twelfth grade students in public schools or will promote the effective, efficient
24		or safe management and operation of the district, the proposed policy will be described in any notice of the meetings at which the policy will be appointed if the notice is insued pursuant to the Open Public
25		be considered, if the notice is issued pursuant to the Open Public Meetings Act. Ch. 42.30 RCW the board will provide an opportunity for
26		public <b>written</b> and oral comment on such policies <b>before</b> adoption or amendment.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		In the event that immediate action on a proposed policy is necessary,
3		the motion for its adoption will provide that immediate adoption is in the best interest of the district. No further action is required. All new or amended policies will become effective upon adoption, unless a
4		specific effective date is provided in the motion for adoption."
5		The motion for suspension of the policy did not provide that immediate adoption is in the best interest of the district; no explanation was
6 7		provided at all by Director Clark, the Board Director making the motion, or by Board President Margel, the other Board Director that voted for the suspension of Resolution 1669, creating a Board majority with Director Cook, the only other attending Board Member (Directors Farah
8		and Song were absent from the meeting).
9	BP 1320	SUSPENSION OF A POLICY
10		A policy of the board will be subject to suspension by a majority vote of the members present, provided all board members have received notice of the meeting and provided notice included a proposal to suspend a
11		policy and an explanation of the purpose. If such proposal is not made in writing in advance of the meeting, a policy may be suspended only by
12		a unanimous vote of all board members present.
13		Board Directors Margel and Clark voted to suspend Resolution 1669; Director Cook did not partake in the vote which was counted as abstaining—the vote was <b>not</b> unanimous of all board members present.
14		
15	BP 1400	MEETING CONDUCT AND ORDER OF BUSINESS
16	BP 1400P Policy and Procedure	The board will conduct all board meetings in a civil, orderly, and business-like manner. The Board uses <i>Roberts Rules of Order (Revised)</i> as a guide, except when board bylaws or policies supersede such rules.
17		The board recognizes the value of public comment on educational issues
18		and the importance of involving members of the public in its meetings. In order to permit fair and orderly expression of public comment, with the exception of emergency situations, the board will provide a period at
19 20		or before every regular meeting at which final action is to take place for public comment.
21		During the public comment period, visitors may address the board on any topic within the scope of the board's responsibility. Public comment
22		may occur orally or through written comments submitted before the meeting. Written comments must adhere to the standards of civility
23		discussed below and must be received 24 hours before the board meeting. All written public comments timely submitted will be
24		distributed to each board member.
25		In addition to the public comment period at the beginning of the
26		meeting, the board will identify the agenda items that require or would benefit from opportunity for public comment and provide those
27		opportunities as part of the meeting agenda before taking final action.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Individuals or groups who wish to present to the board on an agenda item are encouraged to request and schedule such presentations in advance.
4		Opportunity for public comment - both oral and written - is
5 6 7		required before the board adopts or amends a policy that is not expressly or by implication authorized under state or federal law, but which will promote the education of K-12 students, or will promote the effective, efficient, or safe management and operation of the district. Additionally, the board will provide an opportunity for a representative of a firm eligible to bid on materials or services solicited by the board to
8		present about their firm.
	<u>BP 1410</u>	EXECUTIVE OR CLOSED SESSIONS
9		Executive Sessions Before convening in executive session, the president will publicly
10		announce the general purpose for excluding the public from the meeting and announce the time when the executive session will be concluded.
11		The executive session may be extended to a stated later time by announcement of the president.
12 13		An executive session may be conducted for one or more of the following purposes:
13		A. To consider, if in compliance with any required data breach disclosure under RCW 19.255.010 and RCW 42.56.590, and with
15		legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks,
16		security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system
17		vulnerabilities, and other information that, if made public, may increase risk to the confidentiality, integrity, or availability of
18		agency security or to information technology infrastructure or assets.
19		B. To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such
20		consideration would cause a likelihood of increased price.
21		C. To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such
22		consideration would cause a likelihood of decreased price.  However, discussion of the factors comprising the minimum value
23		of the property and the final action of selling or leasing public property will be taken in a meeting open to the public.
24		D. To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.
25		E. To receive and evaluate complaints or charges brought against a
26		director or staff member; however, upon the request of such director or staff member, a public hearing, or a meeting open to the
27		and the same meaning, of a meeting open to the

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		public will be conducted on such complaint or charge.
3		F. To evaluate the qualifications of an applicant for public employment or to review the performance of a staff
4 5		member; however, discussion of salaries, wages, and other conditions of employment to be generally applied within the district will occur in a meeting open to the public, and when the
6		board elects to take the final action of hiring, setting the salary of an individual staff member or class of staff members, or
7		discharging or disciplining an employee, that action will be taken in a meeting open to the public.
8		G. To evaluate the qualifications of a candidate for appointment to the board; however, any interview of such candidate and final action appointing a candidate to the board will be in a meeting open to
9		the public.
10		H. To discuss with legal counsel representing the district matters relating to district enforcement actions, or litigation or potential
11		litigation to which the district, the board, or a member acting in an official capacity is, or is likely to become, a party, when public
12		knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the district.
13		Potential litigation means matters protected by attorney-client
14 15		privilege related to litigation that has been specifically threatened; litigation that the district reasonably believes may be commenced; or the litigation or legal risks of a proposed action or current practice of the district, if public discussion is likely to result in an
16		adverse or financial consequence to the district.
17		The announced purpose of the executive session will be entered into the minutes of the meeting.
18		Closed Sessions/Private Meetings The Open Public Meetings Act (Chapter 42.30 RCW) does not apply to
19		certain board activities and public notice is not required prior to holding a closed session for any of the following purposes:
20		A. Consideration of a quasi-judicial matter between named parties as
21		distinguished from a matter having a general effect on the public or a class or group; or,
22		B. Collective bargaining sessions with employee organizations or professional negotiations with an employee, including contract
23		negotiations, grievance meetings, and discussions relating to the
24		interpretation or application of a labor agreement, or that portion of a meeting in which the board is planning or adopting the strategy or position to be taken during the course of collective
25		bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations
26		or proceedings while in progress.
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3		BP 1410 describes that "the Open Public Meetings Act (Chapter 42.30 RCW) does not apply to certain board activities."
4		The Board used this for the Executive Session discussion of Resolution 1669 from BP 1410:
5		I. Potential litigation means matters protected by attorney-client privilege related to litigation that has been specifically
6 7		threatened; litigation that the district reasonably believes may be commenced; or the litigation or legal risks of a proposed action or current practice of the district, if public discussion is likely to result in an adverse or financial consequence to the district.
8		See also: RCW 42.30.110(1)(i)(iii)
9		But the OPMA does apply to committees of the Board.
10		Per <u>RCW 42.30.020</u> :
		(1) "Public agency" means:
11		
12		(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of
13		Washington;
14		···
15		(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public
16		agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.
17		(3) "Action" means the transaction of the official business of a public
18		agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews,
19		evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the
20		members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.
21		(4) "Meeting" means meetings at which action is taken.
22		[NOT just final action—any action]
		P. Stephen DiJulio has claimed that Director Cook is not (or was not) harmed by Resolution 1669 because, despite the exclusion from closed
<ul><li>23</li><li>24</li></ul>		sessions of the Board, he was still able to take "final action" on union collective bargaining agreements.
25	BP 1420, BP 1420P	Proposed Agenda and Consent Agenda.
	Policy and Procedure	The Policy states, in part:
<ul><li>26</li><li>27</li></ul>		Provided, however, that this policy shall not be construed to prohibit the board from (1) Amending the regular meeting agenda to consider

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3 4		additional items, which may include consideration of supplementary information at any time prior to formal action; nor, (2) Tabling or continuing a matter pursuant to Roberts Rules; nor (3) Suspending notice requirements required herein, pursuant to Policy 1320.
	BP 1815	ETHICAL CONDUCT FOR SCHOOL DIRECTORS
5		Policy Statement
7		Each board director has taken an oath of office to support the Constitutions of the United States and Washington State. The Kent School Board and each of its school directors is committed to upholding the oath of office and to ethical behavior.
9		Ethical behavior is an individual responsibility. Each school director and the board as a whole will base their conduct on these core ethical principles:
10 11		Objectivity – School directors must place the public's interest before any private interest or outside obligation – choices need to be made on the merits.
12 13		Selflessness – School directors should not take actions or make decisions in the performance of their position in order to gain financial or other benefits for themselves, their family, or their friends.
14		Stewardship – School directors should conserve public resources and funds against misuse and abuse.
<ul><li>15</li><li>16</li><li>17</li></ul>		Transparency – School directors must practice open and accountable government. They should be as open as possible about their decisions and actions, while protecting truly confidential information.
18 19		Integrity – School directors should not place themselves under any financial or other obligation to outside individuals or organizations that might inappropriately influence them in the performance of their official duties.
		Failure to adhere to these core ethical principles or failure to comply
20		with other policies adopted by the board or the law may result in the board taking formal censure of the offending school director in
21		accordance with Policy 1825 – Addressing School Board Director Violations.
22		In addition to the Policy Statement standards, the board of directors, as
23		independently elected officials, recognize and accept the responsibility of the role and personal authority to act only within the Kent School
<ul><li>24</li><li>25</li></ul>		District's structure. The board commits to taking the time necessary to understand the varied beliefs, acquire the knowledge, and develop the skills pages says to:
26		<ul> <li>skills necessary to:</li> <li>Work with the staff, students, and community to develop an</li> </ul>
27		educational system based on local needs, values, and best practices.
41		•

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Be a positive advocate of free public education.
3		Work consistently to help the community understand the importance of public education and the need to support it.
4		<ul> <li>Ensure the community is accurately informed about the Kent School District via regular Kent School District communications</li> </ul>
5 6		platforms, and that the Kent School District staff understands and values the community perspective regarding education in the Kent School District.
7		<ul> <li>Uphold and enforce all laws, state board rules and regulations, and legal decisions pertaining to schools.</li> </ul>
8		<ul> <li>Make decisions in terms of the educational welfare of all children.</li> </ul>
9		Share the responsibility of all board decisions, regardless of individual votes.
10		<ul> <li>Actively support Kent School District and the Kent School District Board.</li> </ul>
11		Respect the confidentiality of information that is privileged.
12		Recognize that authority rests with the whole board assembled in
13		public meetings; refuse to surrender independent judgment to special interest groups; and make no personal promises nor take any private actions which may compromise the board or district.
14		Recognize that their responsibility is, together with fellow board
15 16		members, to see that the schools are well-managed. Board action is confined to policy making, planning, appraisal, and advocacy for the benefit of children.
		Follow the board protocol guidelines adopted by resolution and
17		amended as necessary.
18		Board Directors have a duty of stewardship—to conserve public resources and funds against misuse and abuse.
19		Resolution 1669 is "not legally required" (see Notice of Intent and Purpose published on February 28 meeting agenda).
20		A specific exception applies to Director Cook's remote interest in union
21		contract due to his spouse's position as a certificated teacher within the Kent School District. <b>Superintendent Vela and a hostile majority of</b>
22		the KSD Board used Resolution 1669 as an attempt to silence an elected Board Director (when their preferred candidate, former
23		Board Director Leslie Hamada, the incumbent candidate in the election, didn't win.
24		RCW 42.23.040—Remote interests.
25		Removing the rights of an elected officer of the district is not within the jurisdiction of the KSD Board.
26	BP 1825	Addressing School Director Violations.
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	BP 4110	Citizen Advisory Committees and Task Forces.
3		Unelected municipal officers being provided greater authority than an elected Board Member (Director Cook) and taking action in a Board Director's name against his will is outside the scope and authority for an
5		"advisory" committee to a Board.
6	BP 6500	Risk Management.
7		Misuse or improper expenditure of Public funds. Defending indefensible position in litigation.
8		Chance to settle the dispute in August 2024; litigation for Resolution 1669 is now pending in Court of Appeals, Division I.
9		Risk analysis; insurance defense (or lack thereof); cost to taxpayers.
10	United States v.	DUTY TO CONSTITUENTS
11	<u>Lopez-Lukis, 102</u> F.3d 164, 1169 (11th	FIDUCIARY DUTY TO THE ELECTORATE
12	<u>Cir. 1997)</u>	The crux of this theory is that when a political official uses his office for personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest. Elected officials
13		generally owe a fiduciary duty to the electorate. See Shushan, 117 F.2d at 115 (noting that "[n]o trustee has more sacred duties than a public
14		official"). When a government officer decides how to proceed in an official endeavor — as when a legislator decides how to vote on an issue
15		— his constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes his decision based on his own personal interests — as when an official accepts a bribe or
16 17		personally benefits from an undisclosed conflict of interest — the official has defrauded the public of his honest services. See United States
18		v. Sawyer, 85 F.3d 713, 724 (1st Cir. 1996) ("The cases in which a deprivation of an official's honest services is found typically involve
19		either bribery of the official or her failure to disclose a conflict of interest, resulting in personal gain.").
20		An official "has defrauded the public of his services," if he "secretly makes [an official] decision based on his own personal interests" rather
21		than the best interests of his constituents.
22	RCW 28A.150.230	District school directors' responsibilities.
		(1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through
23		its respective administrative staff, be held accountable for the proper
24		operation of their district to the local community and its electorate. In accordance with the provisions of this title, as now or hereafter amended, each common school district board of directors shall be vested
25		with the final responsibility for the setting of policies ensuring quality in
<ul><li>26</li><li>27</li></ul>		the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL		
2		(2) In conformance with the provisions of this title, as now or hereafter		
3		amended, it shall be the responsibility of each common school district board of directors to adopt policies to:		
4		(a) Establish performance criteria and an evaluation process for its superintendent, classified staff, certificated personnel, including		
5		administrative staff, and for all programs constituting a part of such district's curriculum. Each district shall report annually to the superintendent of public instruction the following for each employee		
6 7		group listed in this subsection (2)(a): (i) Evaluation criteria and rubrics; (ii) a description of each rating; and (iii) the number of staff in each rating;		
8		(b) Determine the final assignment of staff, certificated or classified,		
9		according to board enumerated classroom and program needs and data, based upon a plan to ensure that the assignment policy: (i) Supports the learning needs of all the students in the district; and (ii)		
10		gives specific attention to high-need schools and classrooms;		
11		(c) Provide information to the local community and its electorate describing the school district's policies concerning hiring, assigning,		
12		terminating, and evaluating staff, including the criteria for evaluating teachers and principals;		
13 14		(d) Determine the amount of instructional hours necessary for any student to acquire a quality education in such district, in not less than an amount otherwise required in RCW <u>28A.150.220</u> , or rules of the state board of education;		
15 16		(e) Determine the allocation of staff time, whether certificated or classified;		
17		(f) Establish final curriculum standards consistent with law and rules of the superintendent of public instruction, relevant to the particular		
18		needs of district students or the unusual characteristics of the district, and ensuring a quality education for each student in the district; and		
19		(g) Evaluate teaching materials, including text books, teaching aids, handouts, or other printed material, upon complaint by parents,		
20		guardians[,] or custodians of students who consider dissemination of such material to students objectionable in accordance with		
21		RCW <u>28A.320.235</u> and <u>28A.320.230</u> .		
22	WSSDA: Washington School	https://wssda.app.box.com/s/smd5n3ykrkeq2publ7k9gjw2dj67rlzs		
23	Board Standards			
24	<u>RCW</u> 42.30.020(2)&(3)	Committees are subject to the OPMA.  OPMA applies to a committee created "when acts on behalf of		
25		OPMA applies to a committee created "when acts on behalf of government" – definition of action. <u>RCW 42.30.020(2)</u> &(3) (regarding governing body; action); <u>MRSC: Knowing the Territory</u> , p.22		
26	AGO 1986 No. 16	Applicability of OPMA to a committee of the governing body.		
27				

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
3		The Labor Policy Committee includes more than a quorum (a majority) of the legislative body of the KSD (so as to cause the committee, when it acts on behalf of the governing body, to be considered a "governing body" itself.
4 5 6	AGO 2006 No. 6	Applicability of Open Public Meetings Act when a quorum of the members of a governing body are present at a meeting not called by that body.
7	RCW 28A.320.040	RCW 28A.320.040. "not inconsistent with the provisions of this title"
8	RCW 28A.343.390	Quorum.
9	Const. art. I, §§ 33– 34	Washington State Constitution Recall of elective officers.
10	42 U.S.C. 81983	United States Code.
11 12		To state a violation of 42 U.S.C. § 1983, a party must show he or she has been deprived of a protected right by a person acting under color of state law.
13		Every person who, under color of any statute, ordinance, regulation,
14		custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or
15 16		other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
17		A hostile majority of the KSD Board violated Director Cook's civil rights—federal and state constitutional rights to due process.
18	RCW 29A.56	SPECIAL CIRCUMSTANCES ELECTIONS
19	(.110270)	RECALL State of Control Williams
20		Initiating proceedings—Statement—Contents—Verification— Definitions.
21		Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to
22		demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the
23		provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer,
24		naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in
25		office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The
26		charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and
27		nature of each act complained of, be signed by the person or persons

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		making the charge, give their respective post office addresses, and be
3		verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.
4		For the purposes of this chapter:
5 6		(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
7		(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and
8 9		(b) Additionally, "malfeasance" in office means the commission of an unlawful act;
10		(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.
11	Massie v. Brown	Special purpose districts are subject to limitations expressly or implied
12	(1974)	by state law. See Snohomish County v. Anderson (1904) and Massie v. Brown (1974).
13	Snohomish County v. Anderson (1904) and	Brown (1974).
14	Massie v. Brown (1974)	
15	RCW 42.52.020	ACTIVITIES INCOMPATIBLE WITH PUBLIC DUTIES
16 17		No state officer may engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's official
		duties.
18 19		Restricting a duly elected Board Director from fulfilling his duties on the KSD Board, and forcefully delegating his authority (provided to him by
		the electorate and Washington Legislature) to unelected municipal officers is not a proper discharge of official duties.
20	RCW 42.30.010	Legislative declaration.
21		The legislature finds and declares that all public commissions, boards,
22		councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist
23		to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.
24		The people of this state do not yield their sovereignty to the agencies
25		which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know
26 27		and what is not good for them to know. The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created. For
		mai mey may retain control over the instruments they have created. For

AUTHORITY OR SUPPORT FOR PETITIONERS' POSITION O EXHIBIT		SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process.
4	RCW 4.96.010	Tortious conduct, tortious interference, liability for conduct; negligent conduct. See <u>Knowing the Territory</u> , p. 4.
5	RCW 29A.56	SPECIAL CIRCUMSTANCES ELECTIONS
6	(.110270)	RECALL
7		Initiating proceedings—Statement—Contents—Verification— Definitions.
8		Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to
10		demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the
11		provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an
12		act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or
13		more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give
14		a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons
15 16		making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.
17		For the purposes of this chapter:
18		(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of
19 20		official duty;  (a) Additionally, "misfeasance" in office means the performance of a
21		duty in an improper manner; and (b) Additionally, "malfeasance" in office means the commission of an
22		unlawful act;
23		(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.
24	RCW 9A.80.010	Official misconduct (deprive another person of a lawful right or privilege).
25 26	RCW 28A.320.100	Actions against officers.
27	RCW 42.17A.001	Declaration of policy.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3	RCW <u>42.20</u> and <u>42.23</u>	Ethics and conflicts of interest.
4	RCW 42.23.010	DECLARATION OF PURPOSE
5		It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in chapter 268, Laws of 1961, in conflict with the
6 7		proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under
8		sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public
9		responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made
10 11		from a wider group of responsible citizens of the communities which they are called upon to serve.
12	RCW 42.23.040	REMOTE INTERESTS
13		A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the
14 15		municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or
16		ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:
17		(1) That of a nonsalaried officer of a nonprofit corporation;
18		(2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
19		(3) That of a landlord or tenant of a contracting party;
20		(4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.
21		None of the provisions of this section are applicable to any officer
22   23		interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.
24	RCW 42.23.030	INTEREST IN CONTRACTS PROHIBITED—EXCEPTIONS
25		No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by through or under the
26 27		indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3		any other person beneficially interested therein. This section shall not apply in the following cases:
4		
5		(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed \$3,000 in any calendar
6		month.
7		(11) The letting of any employment contract to the spouse of an officer
8		of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the
9		officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the
10		district. However, in a second-class school district that has less than 200 full-time equivalent students enrolled at the start of the school year as
11		defined in RCW 28A.150.203, the spouse is not required to be under contract as a certificated or classified employee before the date on which
12		the officer assumes office;
13		A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested
14 15		even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official
16		minutes or similar records of the municipality before the formation of the contract.
17	RCW 42.30.110	EXECUTIVE SESSIONS
18		(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or
19		special meeting:
20		(f) To receive and evaluate complaints or charges brought against a
21		public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be
22		conducted upon such complaint or charge;
23		(i) To discuss with legal counsel representing the agency matters relating
24		to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the
25		agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the
26		discussion is likely to result in an adverse legal or financial consequence to the agency.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is
4		present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:
5		(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
6 7		(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
8		(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal
9		risks is likely to result in an adverse legal or financial consequence to the agency;
10		
11		(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the
12		public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated
13 14		later time by announcement of the presiding officer. The announced purpose of excluding the public must be entered into the minutes of the meeting required by RCW 42.30.035.
15		Compare RCW 42.30.110(f) vs. RCW 42.30.110(i) re litigation (notice of Executive Session).
16	Chapter 42.52 RCW	ETHICS IN PUBLIC SERVICE
17	RCW 42.52.900	LEGISLATIVE DECLARATION
18		Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State
19		officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the
20		responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed,
21		may not be used for personal gain or private advantage.  The citizens of the state expect all state officials and employees to
22		perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only
23		in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media;
24		ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public
25		service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the
26		public good does government work as it should.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL		
2		The obligations of government rest equally on the state's citizenry. The		
3		effectiveness of government depends, fundamentally, on the confidence citizens can have in the judgments and decisions of their elected		
4		representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that		
5		both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.		
6 7		All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens.		
8	MRSC: Public	DUE PROCESS RIGHTS OF A PRIVATE PARTY		
9	<u>Hearings</u>	Local governments are sometimes required by state law to hold public		
10		hearings. The issues addressed in these public hearings are frequently contentious, <b>may involve due process rights of private parties</b> , and often generate litigation, so it is important to know and follow proper		
11		hearing procedures.		
12		A public hearing is primarily intended to obtain public testimony or comment before significant decisions are made. A public hearing can		
13		occur as part of a regular or special public meeting or, in some circumstances, can be entirely separate from a public meeting. A public		
14		hearing is obligatory when due process is required, or when a specific statute or local regulation requires one. A local government		
15		may also hold a public hearing when it desires public input on a sensitive or controversial policy issue.		
16		While following proper hearing procedures may not eliminate litigation over the issues addressed in hearings, it will help minimize the risk of		
17		the decisions made following public hearings being overturned by the courts on procedural grounds. Following proper procedures also helps		
18		ensure that public hearings are conducted fairly.		
19	State ex rel. Beam v. Fulwiler (1969)	Unfair hearings may violate the constitutional "due process of law" rights of individuals.		
20	MDSC: Vnowing the	EXECUTIVE SESSIONS		
21	MRSC: Knowing the Territory	Potential litigation is defined as being matters protected under the		
22	(p. 24-26)	attorney-client privilege and as either: specifically threatened; reasonably believed and may be commenced by or against the agency,		
23		the governing body, or a member acting in an official capacity; or as litigation or legal risks of a proposed action or current practice that the		
24		agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the		
25		agency. The presence of an attorney at a session does not in itself allow the meeting to be held as an executive session (RCW 42.30.110(1)(i)).		
26		Improper Disclosure of Information Learned in Executive Session:		
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL	
2		It is the clear intent of the provisions relating to executive sessions that	
3		information learned in executive session be treated as confidential.  However, there is no specific sanction or penalty in the Open Public  Meetings Act for disclosure of information learned in executive session.	
4		A more general provision is provided in RCW 42.23.070 prohibiting disclosure of confidential information learned by reason of the official	
5 6		position of a city officer. This general provision would seem to apply to information that is considered confidential and is obtained in executive	
		sessions.	
7 8	AGO 2017 No. 5	Whether info learned in executive session is confidential if the information was within the scope of the statutorily authorized purpose for convening the executive session.	
9		"1. Are the members of the governing body of a public	
10		agency prohibited by the Open Public Meetings Act from disclosing information shared during executive sessions that are properly called	
11		under the Open Public Meetings Act?	
12		Brief Answer: Yes. Participants in an executive session have a duty under the OPMA to hold in confidence information that they obtain in the course of a properly convened executive session, but only if the	
13		information at issue is within the scope of the statutorily authorized purpose for which the executive session was called.	
14		···	
15 16		4. Under what circumstances, if any, may the governing body of a public agency exclude an elected member from executive session because of concerns about confidential information?	
		Brief Answer: A governing body may ask a court to enforce the	
17		confidentiality of an executive session through a writ of mandamus or injunction, pursuant to RCW 42.30.130. It is unlikely that a governing	
18		body would ordinarily have the authority to exclude one of its members from attending an executive session without such an injunction, but we	
19		do not rule out the possibility that some governing bodies may be authorized to do so pursuant to the statutes or local charters under which	
20		specific governing boards may operate."	
21			
22		As exceptions to the general rule that governing bodies must conduct their business in open meetings, the permissible scope of executive	
23		sessions are construed narrowly. <i>Columbia Riverkeeper</i> , 2017 WL 2483271, at *7.	
24	WSSDA: Open	WSSDA: OPEN PUBLIC MEETINGS	
25	Public Meetings (p.8)	Executive Sessions	
26	(h·o)	There are seventeen statutory reasons for an executive session. Only nine of them, however, apply to school boards. Here are those reasons:	
27		ICUSOIIS.	

1	AUTHORITY OR EXHIBIT		SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		1.	To consider matters affecting national security;
3		2.	To consider, in compliance with data security breach disclosure requirements and with legal counsel available, information regarding
4			the infrastructure and security of computer and telecommunication networks, security and service recovery plans, and security risk
5			assessments and security test results that if made public might increase the risk to the confidentiality, integrity, or availability of district converts or might increase the risk to information technology.
6			district security or might increase the risk to information technology infrastructure or assets;
7		3.	To consider the selection of a site or the acquisition of real estate if public knowledge of the matter might increase the price;
8		4.	To consider the minimum price at which to sell or lease real estate if public knowledge of the matter might depress the price (final action
9			selling or leasing real estate, though, must be taken in a public meeting);
11		5.	To review negotiations on the performance of a publicly bid contract if public knowledge might increase costs;
12		6.	To receive and evaluate complaints or charges against an employee or board member (however, the person complained against may
13			request a public hearing or a meeting open to the public to address the complaint or charge);
<ul><li>14</li><li>15</li></ul>		7.	To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee (final actions, though, must be taken in public and discussions affecting employees generally must be held in public too);
16		8.	To evaluate the qualifications of a candidate for appointment to
17			elective office (interviews and the final appointment, though, must be held in public); and
18		9.	To discuss with legal counsel matters relating to enforcement actions or to discuss with legal counsel litigation <i>or potential litigation if</i>
19			public discussion might result in an adverse legal or financial consequence.
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PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT SCHOOL DISTRICT NO. 415 - 75

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RECALL PETITIONERS
GRETA NELSON
MICHELE BETTINGER
LORI WAIGHT

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#### VII. <u>CHARGE TWO</u>

(Violations of Open Public Meetings Act; Violation of Constitutional Rights and Denial of Due Process; Abuse of Executive Session)

Board Director Clark committed acts of misfeasance, malfeasance, and/or violated his oath of office as identified in Sections III, IV, V and VII herein.

A. Foster Garvey Memo used for Board Deliberation as the Justification of Resolution 1669.

The "Foster Garvey" memo was used for Board deliberation in a quasi-judicial action determining the legal rights, duties, or privileges of a specific party, which was conducted during Executive Sessions of the KSD Board on January 24, February 7, and February 14, 2024 and was the basis for Resolution 1669 and the adverse action taken against Director Cook.

Director Cook, when presented with the memo describing adverse action being presented and considered, demanded that the matter be brought out into the Public, which was his right.

B. Public Hearing Requested by Director Cook; Denial of Due Process and Violation of Constitutional Rights.

By requesting an open public meeting or public hearing, Director Cook was waiving his right to any confidentiality or privilege, and because of his request for a Public hearing, the Public also had a right to observe that hearing.

The Board does not get to decide what is good for the Public to know, and what is not good for the Public to know. RCW 42.30.010.

Director Cook was not allowed to bring the matter of the adverse action being taken against him before the Public for hearing—he was denied that right by a hostile majority of the Board—and the individual actions of Directors Margel and Clark (and former Director Farah). Resolution 1669 restricted Director Cook's right to due process and freedom of speech and impeded a duly elected Board Director from fulfilling his role on the Board on behalf of the electorate he serves. "Unfair hearings may violate the constitutional "due process of law" rights of individuals."

<sup>&</sup>lt;sup>67</sup> See State ex rel. Beam v. Fulwiler (1969).

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#### C. Abuse of Executive Session; Notice.

To convene an executive session, the governing body's presiding officer must announce: (1) the purpose of the executive session, and (2) the time when the executive session will end. The announcement is to be given to those in attendance at the meeting. RCW 42.30.110(2).

The announced purpose of the executive session must be one of the statutorily identified purposes for which an executive session may be held. The announcement therefore **must contain enough information** to identify the purpose as falling within one of those identified in RCW 42.30.110(1). It would not be sufficient, for example ... to declare simply that the council will now meet in executive session to discuss "personnel matters." Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session. RCW 42.30.110(1)(f), (g)."68

Participants in an executive session have a legal duty under the OPMA to hold in confidence information that they obtain in the course of a properly convened executive session, but only if the information at issue is within the scope of the statutorily authorized purpose for which the executive session was called. Id. (emphasis added).

"Potential litigation" is often used as a justification for executive sessions because it is susceptible to a broad reading. Indeed, many things a public agency does will subject it to the possibility of a lawsuit. However, a court will construe "potential litigation" or any other grounds for an executive session narrowly and in favor of requiring open meetings. Miller v. City of Tacoma (1999). To avoid a reading of this subsection that may be broader than that intended by the Legislature—and to avoid a suit alleging a violation of the OPMA—it is important for a governing body to look at the facts of each situation in the context of all the requirements of this subsection. <sup>69</sup> See also Columbia Riverkeeper, 2017 WL 2483271, at \*7.

RCW 42.30.110 only precludes the disclosure of information that pertains to the statutorily authorized purpose for which the executive session was called. To the extent that the

<sup>&</sup>lt;sup>68</sup> Open Government Resource Manual (Procedures for Holding an Executive Session) at https://www.atg.wa.gov/Open-Government-Resource-Manual/Chapter-3. Emphasis added. <sup>69</sup> See https://www.atg.wa.gov/Open-Government-Resource-Manual/Chapter-3. Emphasis added.

discussion at an executive session might stray from the topic the information would not be rendered confidential by 42.30.110. Participants in an executive session have a legal duty under the OPMA to hold in confidence information that they obtain in the course of a *properly* convened executive session, but only if the information at issue is within the scope of the statutorily authorized purpose for which the executive session was called.<sup>70</sup>

As stated in AGO 2017 No. 5:

"Under what circumstances, if any, may the governing body of a public agency exclude an elected member from executive session because of concerns about confidential information. The most readily-available remedy for a governing body concerned that one of its members might disclose confidential information is the one provided in the OPMA itself. That is, the governing body can ask a court to issue either a writ of mandamus or an injunction to stop or prevent a threatened violation of the OPMA. RCW 42.30.130. Exclusion of an elected member is a less likely remedy.

The exclusion of an elected member of a governing body of a public agency would seriously interfere with the ability of an elected official to represent the voters who selected him or her to perform the job. "When the voters choose an elected official, they necessarily choose who will be responsible for the duties of that office." State ex rel. Banks v. Drummond, 187 Wn.2d 157, 179, 385 P.3d 769 (2016). As has long been recognized, an individual member of a multi-member body can do little "except at a meeting with the others." State ex rel. Heilbron v. Van Brocklin, 8 Wash. 557, 565, 36 P. 495 (1894). Members of a governing body generally have the right to attend its meetings, including executive sessions. Myers v. Elgin Cmty. Coll. Bd. of Trustees, 46 Ill. App. 3d 768, 770-71, 361 N.E.2d 314 (1977) (upholding the right of a student member of a community college board of trustees to attend executive sessions of the board). Our counterpart in a sister state concluded that exclusion is not a remedy, noting that "the inherent right of a member of a governmental body to attend all meetings of that body,

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<sup>&</sup>lt;sup>70</sup> AGO 2017 No. 5.

including executive sessions," made exclusion inappropriate. Op. Att'y Gen. L-115 (N.D.

1999), at 1. And we have identified no statutory grant of authority to exclude members.

Thus, any effort to exclude a member based on fears of a failure to maintain confidentiality would be legally risky. *Id*.

A governing body may enforce the confidentiality of executive sessions through the judicial remedy provided in RCW 42.30.130, but the AGO identified no authority allowing for the exclusion of members without a court order. *Id.*"

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
<u>BP 1410</u>	Closed Sessions/Private Meetings.
	The Open Public Meetings Act (Chapter 42.30 RCW) does not apply to certain <b>board activities</b> and public notice is not required prior to holding a closed session for any of the following purposes:
	Consideration of a quasi-judicial matter between named parties as distinguished from a matter having a general effect on the public or a class or group; or,
	Collective bargaining sessions with employee organizations or professional negotiations with an employee, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement, or that portion of a meeting in which the board is planning or adopting the strategy or position to be taken during the course of collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.
MRSC: Public	Notice Requirement.
<u>Hearings</u>	Due process requires that government entities give proper notice to an individual before making any decision that would impede upon
https://mrsc.org/expl ore-topics/public- meetings/hearings/pu blic- hearings#procedural	that individual's rights or property interest. In the context of quasi- judicial hearings, the purpose of this notice is to alert those who may be affected by the proposed action and inform them of its nature so as to allow them the time and opportunity to prepare for and attend the public hearing. If the hearing is being held in accordance with a statute, then the statute may specify the particular timing and manner of notice that is required. Where the statute does not specify, then the timing and method of providing notice should seek to ensure that the underlying purpose of notice is reasonably fulfilled.
RCW 42.30.010 Emphasis added.	"[B]oards committees and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		not give their public servants the right to decide what is good for the
3		people to know and what is not good for them to know. The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the
4		instruments they have created. For these reasons, even when not
5		required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process."
6 7	RCW 42.30.020 (2)	Subject to OPMA (governing body of public agency).
8	RCW 42.30.060	Ordinances, rules, resolutions.
9	RCW 42.30.110 (1)(f)	"However upon request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge."
10		The KSD Board was required to limit its January 24, February 7, and
11		February 14, 2024 closed meetings to permissible and "noticed" purposes under RCW 42.30.110, but failed to do so.
12	RCW 42.30.110	Notice re Executive Session – adverse action against a Board Director
13	(1)(i)(iii)	[the Notice should have been "(f)" but KSD used (i) legal counsel and risk of litigation.
14		See EXHIBIT 18 (Joseph Riley and Allison Riley Amended Complaint re OPMA Violations Related to Superintendent Evaluation)—did not fit
15		within OPMA exception for discussing potential litigation, or was
16		more accurately categorized as taking adverse action against a Board Director.
17	RCW 42.30.120	Violations/personal liability.
18	WSSDA: Open	There are seventeen statutory reasons for an executive session. Only
19	<u>Public Meetings</u> Executive Sessions,	nine of them, however, apply to school boards. Here are those reasons:
20	p.8	To consider matters affecting national security;
21		2. To consider, in compliance with data security breach disclosure requirements and with legal counsel available, information regarding
22		the infrastructure and security of computer and telecommunication networks, security and service recovery plans, and security risk
23		assessments and security test results that if made public might increase the risk to the confidentiality, integrity, or availability of
24		district security or might increase the risk to information technology infrastructure or assets;
25		3. To consider the selection of a site or the acquisition of real estate if public knowledge of the matter might increase the price;
26		4. To consider the minimum price at which to sell or lease real estate if
27		public knowledge of the matter might depress the price (final action

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		selling or leasing real estate, though, must be taken in a public meeting);
3 4		5. To review negotiations on the performance of a publicly bid contract if public knowledge might increase costs;
5		6. To receive and evaluate complaints or charges against an employee or board member (however, the person complained
6		against may request a public hearing or a meeting open to the public to address the complaint or charge);
7 8		7. To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee (final actions, though, must be taken in public and discussions affecting employees generally must be held in public too);
9 10		8. To evaluate the qualifications of a candidate for appointment to elective office (interviews and the final appointment, though, must be held in public); and
11		9. To discuss with legal counsel matters relating to enforcement actions or to discuss with legal counsel litigation or potential
12		litigation <u>if</u> public discussion might result in an adverse legal or financial consequence.
13		VIII. CHARGE THREE
14	(Non-Compli	ance with Board Policy regarding the Adoption of a Policy;
15	V	iolation of RCW 28A.320.015; Failure of a Duty)
16 17		committed acts of misfeasance, malfeasance, and/or violated his oath a Sections III, IV, V and VIII herein.
18		nave Broad Discretionary Power to Determine and Adopt Written Provided they are Not in Conflict with Other Law; Violation of
19	,	A.320.015 and Chapter 42.30 RCW.
20	Resolution 1669	violates RCW 28A.320.015, which establishes that school directors
21	cannot adopt written pol	licies that are in conflict with established law.
22	Violation of RC	W 28A.320.015—The enactment of Resolution 1669 is in violation of
23	law for special purpose	districts—an improper committee of the District containing a quorum
24	of Board members was	created by a Resolution—so the individual act of Board Director Clark
25	approving a resolution	that is in conflict with other law is a recallable offense (as further
26	described in multiple w	ays in this Recall Petition, and specifically within Section V and
27	CHARGES ONE THE	OUGH FOUR).

The improper Labor Policy Committee created by a Resolution (which included the individual vote of Director Clark) contained a quorum of Board members, and Board actions (including positive and negative decisions) and deliberations occurred in closed sessions during collective bargaining with unions—and taking any action (not just final action) on behalf of the Board meant that the governing body was performing both functions—the decisionmaking power and a separate advisory function for the Board.

BP 1310 states that "Proposed new policies and proposed changes in existing policies will be presented in writing for reading and discussion. Unless the board determines that immediate action would be in the best interests of the district, the final vote for adoption will take place not earlier than the next succeeding regular or special board meeting.

There was no identified need for immediate action at the February 28, 2024 meeting, and the Notice of Intent and Purpose for the Resolution stated that the Resolution was not legally necessary. *See* **EXHIBIT 3** (Resolution 1669).

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Failure of a Duty to follow the Board Policy in the adoption of a new policy—the final vote for adoption should have occurred at the next succeeding regular or special board meeting—by Recall Petitioners' read of current District policy, it would appear that all formal policies of the District must have more than one formal "reading" of the policy to the Public before it is enacted by the Board.

ALITHORITY OR SUPPORT FOR PETITIONERS' POSITION ON RECALL.

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
BP 1310	POLICY REVIEW, ADOPTION, MANUALS, AND ADMINISTRATIVE PROCEDURES
	A board policy is a formal expression of the judgment of the board providing guidance or regulation for administrative action. Legislation of new policies and the periodic review of existing policies are primary functions of the board.
	Policy Adoption
	Proposed new policies and proposed changes in existing policies will be presented in writing for reading and discussion. Unless the board determines that immediate action would be in the best interests of the district, the final vote for adoption will take place not earlier than the next succeeding regular or special board meeting.
	Any written statement by any person relative to a proposed policy or amendment should be directed to the board secretary prior to the second reading. The board may invite oral statements from staff members or community members as an order of business.
	When the board is considering a district policy or amendment to policy that is not expressly or by implication authorized by state or federal law, but which will promote the education of kindergarten through twelfth grade students in public schools or will promote the effective, efficient or safe management and operation of the district, the proposed policy will be described in any notice of the meetings at which the policy will be considered, if the notice is issued pursuant to the Open Public Meetings Act. Ch. 42.30 RCW the board will provide an opportunity for public written and oral comment on such policies before adoption or amendment.
	In the event that immediate action on a proposed policy is necessary, the motion for its adoption will provide that immediate adoption is in the best interest of the district. No further action is required. All new or amended policies will become effective upon adoption, unless a specific effective date is provided in the motion for adoption.

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
3		Policies as adopted or amended will be made a part of the minutes of the meeting at which action was taken and will also be included in the district's policy manual.
4		Non-substantive editorial revisions and changes in administrative, legal, and/or cross references need not be approved by the board.
5		Policy Manuals
6		The superintendent will develop and maintain a current policy manual that contains the policies of the district.
7		The manual is intended as both a tool for district management as well as
8		a source of information to community members, staff, and others about how the district operates. To that end each administrator and each board member will have ready access to the manual. In addition, a manual will
9		be available as the superintendent may determine for the use of staff, students and community members.
10		In addition, the complete text of the manual is available online at the
11		district's website and such other places as the superintendent may determine for the use of staff, students, and patrons.
12		All policy manuals distributed to anyone will remain the property of the district. They will be subject to recall at any time.
13		Administrative Procedures
<ul><li>14</li><li>15</li></ul>		The superintendent will develop such administrative procedures as are necessary to ensure consistent implementation of policies adopted by the board.
16		When a written procedure is developed, the superintendent will submit it to the board as an information item. Such procedures need not be
17		approved by the board, though the board may revise them when it appears that procedures are not consistent with the board's intentions as expressed in its policies. Procedures need not be reviewed by the board
18 19		prior to their issuance; on controversial topics, the superintendent should request prior board consultation.
		Legal
20   21		RCW 28A.320.015 - School boards of directors—Powers—Notice of adoption of policy.
22		RCW 42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings — Notice— Secret voting prohibited
23		RCW 28A.320.010 Corporate powers
24		RCW 28A.320.040 Bylaws for board and school government
	BP 1400; BP 1400P	MEETING CONDUCT, ORDER OF BUSINESS, AND QUORUM.
25		PUBLIC ATTENDANCE AND COMMENT
<ul><li>26</li><li>27</li></ul>	(as related to Adoption of Policy,	"Opportunity for public comment – both oral and written – <b>is required</b> before the board adopts or amends a policy that is not expressly or by implication authorized under state or federal law, but which will

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	Suspension of Policy)	promote the education of K-12 students, or will promote the effective, efficient, or safe management and operation of the district.
3		VIOLATION OF BP 1400—opportunity for written public comment
4		was not provided in advance.
5		Legal RCW 42.30.035 Minutes.
6		RCW 28A.320.040 Bylaws for board and school government.
7		RCW 28A.343.380 Meetings.
´		RCW 28A.343.390 Quorum — Failure to attend meetings.
8		RCW 42.30.030 Meetings declared open and public.
9		RCW 42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings — Notice — Secret voting prohibited.
10		RCW 42.30.080 Special Meetings.
11		Cross Reference
12		1220 Board Officers And Duties Of Board Members
		1320 Suspension of a Policy
13		1410 Executive Or Closed Sessions
14		1420 Proposed Agenda and Consent Agenda
15	BP 1815	ETHICAL CONDUCT FOR SCHOOL DIRECTORS
16		Policy Statement
17		Each board director has taken an oath of office to support the Constitutions of the United States and Washington State. The Kent
18		School Board and each of its school directors is committed to upholding the oath of office and to ethical behavior.
19		Ethical behavior is an individual responsibility. Each school director and the board as a whole will base their conduct on these core ethical
20		principles:
21		Objectivity – School directors must place the public's interest before any private interest or outside obligation – choices need to be made
22		on the merits.
23		Selflessness – School directors should not take actions or make decisions in the performance of their position in order to gain financial or other benefits for themselves, their family, or their
24		friends.
25		Stewardship – School directors should conserve public resources and funds against misuse and abuse.
26		Transparency – School directors must practice open and accountable government. They should be as open as possible about their
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		decisions and actions, while protecting truly confidential information.
3 4 5		Integrity – School directors should not place themselves under any financial or other obligation to outside individuals or organizations that might inappropriately influence them in the performance of their official duties.
6		Failure to adhere to these core ethical principles or failure to comply with other policies adopted by the board or the law may result in the board taking formal censure of the offending school director in accordance with Policy 1825 – Addressing School Board Director Violations.
8		In addition to the Policy Statement standards, the board of directors, as
9		independently elected officials, recognize and accept the responsibility of the role and personal authority to act only within the Kent School
10		District's structure. The board commits to taking the time necessary to understand the varied beliefs, acquire the knowledge, and develop the
11		skills necessary to:
12		<ul> <li>Work with the staff, students, and community to develop an educational system based on local needs, values, and best practices.</li> </ul>
13		Be a positive advocate of free public education.
14		Work consistently to help the community understand the importance of public education and the need to support it.
15 16		Ensure the community is accurately informed about the Kent School District via regular Kent School District communications
17		platforms, and that the Kent School District staff understands and values the community perspective regarding education in the Kent School District.
18		Uphold and enforce all laws, state board rules and regulations, and legal decisions pertaining to schools.
19		Make decisions in terms of the educational welfare of all
20		children.
21		<ul> <li>Share the responsibility of all board decisions, regardless of individual votes.</li> </ul>
22		<ul> <li>Actively support Kent School District and the Kent School District Board.</li> </ul>
23		Respect the confidentiality of information that is privileged.
24		<ul> <li>Recognize that authority rests with the whole board assembled in public meetings; refuse to surrender independent judgment to</li> </ul>
25		special interest groups; and make no personal promises nor take any private actions which may compromise the board or district.
26		Recognize that their responsibility is, together with fellow board members, to see that the schools are well-managed. Board action
27		memoers, to see that the schools are well-managed. Doald action

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		is confined to policy making, planning, appraisal, and advocacy for the benefit of children.
3		<ul> <li>Follow the board protocol guidelines adopted by resolution and amended as necessary.</li> </ul>
4		Legal
5		Misconduct of Public Officers. Certain corrupt practices of school officials – Penalty.
6 7		Bylaws for board and school government.  District school directors' responsibilities.  Corporate powers.
8		Cross Reference 1220 - Board Officers and Duties of Board Members
9		1610 - Conflicts of Interest – Board and Superintendent
10	<u>BP 1825</u>	ADDRESSING SCHOOL DIRECTOR VIOLATIONS
11		Purpose The Kent School Board and each of its school directors are committed to
12		faithful compliance with the law, provisions of the board's policies, and exercising good judgment.
13		Policy Statement
14		The board recognizes that failure to deal with deliberate or continuing violations of the law, board policies, or lapses in good judgment by its school board members risks the loss of community confidence and damages the board's ability to govern effectively. Therefore, in the event
15 16		of a board member's willful and/or continuing violation of law, policy, or judgment, the board may address the issue through the following process, which is intended to escalate only as necessary:
17 18		Conversation in a private setting between the offending school director and the board chair, or another individual school director identified by the board.
19		Discussion in a properly convened executive session between the offending school director and the full board.
20		Possible removal of the offending school director from any leadership or committee positions to which the offending school
21		director has been appointed or elected to by the board.
22		4. Censure of the offending school director by adopting a resolution in an open meeting as a means of separating the board's focus
23		and intent from those of the offending school director.  Legal
24		RCW 28A.320.040 - Bylaws for board and school government. RCW 28A.635.050 - Certain corrupt practices of school officials
25		Cross Reference 1815 - Ethical Conduct for School Directors
<ul><li>26</li><li>27</li></ul>	RCW 28A.320.015	SCHOOL BOARDS OF DIRECTORS—POWERS—NOTICE OF ADOPTION OF POLICY

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
	Provides that school directors cannot adopt written policies that are in conflict with established law.
WSSDA: Open	"Surprise agenda amendments serve no one well." (Agendas, p. 6)
Public Meetings	"Public comment periods have First Amendment protections." (Public Comment, p. 7)
RCW 28A.150.230 (1)	(1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through its respective administrative staff, be held accountable for the proper operation of their district to the local community and its electorate. In accordance with the provisions of this title, as now or hereafter amended, each common school district board of directors shall be vested with the final responsibility for the setting of policies ensuring quality in the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.
RCW 42.30.060	Ordinances, rules, resolutions.
RCW 28A.320.040	Bylaws.
Robert's Rules of Order	Failure to follow rules of order for meetings.
1	

#### IX. CHARGE FOUR

(Non-Compliance with Board Policy for Suspension of a Policy; Violations of OPMA and

Notice Requirements; Violation of First Amendment Right to Free Speech)

Board Director Clark committed acts of misfeasance, malfeasance, and/or violated his oath of office as identified in Sections III, IV, V and IX herein.

A. On October 9, 2024, Without Explanation, Board Directors Margel and Clark Add Last Minute Agenda Item and Take Vote to Suspend Resolution 1669 Effective Immediately.

Board Directors Margel, Clark, and Cook were in attendance at the October 9, 2024 regular meeting of the KSD Board. Directors Song and Farah were not present.

- B. Violations of Board Policies and OPMA.
  - 1. Violations of Board Policy 1400 (Meeting Conduct, Order of Business, and Quorum) and Chapter 42.30 RCW (OPMA).

Per KSD BP 1400, "Opportunity for public comment - both oral and written - is

required before the board adopts or amends a policy."

"Before adopting a policy ... the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy.

The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors."

The Washington Legislature provides for the same notice requirements to the Public for the adoption of policies, as for any amendment or suspension of policies (advance notice to the Public and an opportunity for written and oral comment). Per Resolution 1641 (13): KSD Board Directors "agree to follow the process of adding items to the agenda, instead of bringing it up unexpectedly."<sup>72</sup>

<u>Violations of BP 1400 and 42.30 RCW</u>—the Public was not provided the opportunity for written comment (which is required to be provided by the Public in advance of the meeting) regarding the Suspension of Resolution 1669 on October 9, 2024.

2. Violations of BP 1310 (Policy Adoption re Amendment to Policies), BP 1320 (Suspension of a Policy), and Chapter 42.30 RCW (OPMA).

Proposed new policies and proposed changes in existing policies will be presented in writing for reading and discussion. <u>Unless the board determines that immediate action would</u> be in the best interests of the district, the final vote for adoption will take place not earlier than the next succeeding regular or special board meeting.

Any written statement by any person relative to a proposed policy or amendment should be directed to the board secretary prior to the second reading. The board may invite oral statements from staff members or community members as an order of business. When the board is considering a district policy *or amendment to policy* that is not expressly or by implication authorized by state or federal law, but which will promote the education of kindergarten through twelfth grade students in public schools or will promote the effective, efficient or safe

<sup>&</sup>lt;sup>71</sup> Recall Petitioners are of the belief that the same requirements apply to any amendment or suspension of a policy.
<sup>72</sup> See EXHIBIT 19 (Resolution 1641 effective April 26, 2023 and signed by Board President Margel and Director Clark).

management and operation of the district, the proposed policy will be described in any notice of the meetings at which the policy will be considered, if the notice is issued pursuant to the Open Public Meetings Act. Ch. 42.30 RCW the board will provide an opportunity for public written and oral comment on such policies before adoption or amendment.

In the event that immediate action on a proposed policy is necessary, the motion for its adoption will provide that immediate adoption is in the best interest of the district.

No reason was provided for the suspension other than "it [had] served its purpose" as Board President Margel stated in the October 9 meeting.

<u>Violations of BP1310, BP 1320, and Chapter 42.30 RCW</u>—regarding Director Clark's individual actions taken to immediately suspend Resolution 1669 at the October 9 regular meeting of the Board. Directors Margel and Clark voted "yea" to suspend Resolution 1669, and Director Cook took no action (which was counted as abstaining from the vote)—*which is not a unanimous vote of members present* for taking immediate action that either adopts, amends or suspends a policy of the Board (a violation of <u>KSD BP 1320</u>).

## C. Violation of BP 1420 (Proposed Agenda and Consent Agenda)

<u>Violation of KSD BP 1420</u>—KSD Board Members received no information on the suspension of the policy in advance of the meeting. Per <u>KSD BP 1420</u>, copies of the proposed agenda, minutes of the previous meeting, and relevant supplementary information will be provided to each board member at least seventy-two (72) hours in advance of the meeting (violation of <u>KSD BP 1420</u> – KSD Board Members received no information on the suspension of the policy in advance of the meeting).

# D. No Stated Emergency or Reason for the Suspension of a Board Policy Requiring Immediate Action.

There was no stated emergency and no stated need for the immediate suspension. There was no stated reason explaining how immediate action would be in the best interests of the Board and District. Despite valid questions from Director Cook, no information was provided by Director Clark, who made the motion for adding the agenda item of "immediate repeal" of

Resolution 1669, or by Board President Margel who seconded the motion. This was an abuse of authority, a violation of BP 1320, and violation of OPMA. The only thing resembling a reason was Board President Margel's comment that "it [had] served its purpose." She didn't or wouldn't respond as to what that purpose was.

As anyone can image, this would be (and was) a very frustrating and disappointing exchange with colleagues, as Director Cook had spent (at that point in the Resolution 1669 litigation) just over \$42,000 of personal funds to appeal the improper Board action taken by a hostile majority of the KSD Board.

The suspension was necessary (that is not in dispute); what is in dispute is that the KSD Board is not following its own policies and procedures, is not being transparent and open to the Public or allowing enough time for the Public to provide written comments, and has broken the law in the process of hiding behind Executive Sessions, giving the impression to the Public of corruption on the KSD Board, or at the very least, acts of misfeasance, malfeasance, and/or violations of oath(s) of office.

### E. Public Attendance and Comments; First Amendment Protections.

Per KSD BP 1400 (Public Attendance and Comments)—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 public comment, with the exception of emergency situations, the board will provide a period at or before every regular meeting at which final action is to take place for public comment.

During the public comment period, visitors may address the board on any topic within the scope of the board's responsibility. Public comment may occur orally or through written comments submitted before the meeting. Written comments must adhere to the standards of civility discussed below and must be received 24 hours before the board meeting. All written public comments timely submitted will be distributed to each board member. Id.

Public comment periods for school board meetings have First Amendment protections (including for those who only have the ability to provide written comment and/or those who are

Per RCW 28A.320.015 (School boards of directors—Powers—Notice of adoption of policy)—"Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors."

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
Resolution 1641	REVISED PROTOCOL GUIDELINES
	The Kent School Board will emphasize policymaking, planning, and advocacy for the benefit of children. To support a partnership in responsibility and teamwork, the board and the administration agreed to the following protocol guidelines.
	<ol> <li>The board will consider the district's core values of equity, excellence, and community; research; best practices; and public input, when appropriate, in its decision-making process.</li> <li>The superintendent is the chief executive officer and should recommend, propose, and suggest on operational and community matters before the board.</li> <li>Individual board members do not have independent authority to make board decisions or make individual commitments.</li> <li>Once the board reaches a decision, all board members will support the decision of the majority. Board members may be asked to execute certain documents, such as, but not limited to, resolutions, upon such majority vote. A board member's failure to execute such a document shall not nullify the vote of the board majority nor have other any legal effect.</li> <li>While the board is eager to listen to its constituents and staff, each inquiry is to be referred to the person who can properly and expeditiously address the issue. We agree to follow the chain of command in accordance with established board policy and procedure. Board members will ensure that electronic communications containing information impacting duties of the board will copy Kent Board.</li> <li>The board will encourage stakeholders to present their own issues, problems, or proposals.</li> </ol>

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		7. The board president or designee will be the official spokesperson
3		for the board.  8. Although communications between the central office
,		administrators and the school board are encouraged, board
4		requests are to be directed to the superintendent.  9. The board or its individual members agree to direct all personnel
5		complaints and criticisms directly to the superintendent.
6		10. Board meetings are where the board does its work in public. We agree to speak to the issues on the agenda. Facts and the
		information needed from the administration will be referred
7		through the superintendent.  11. Board meetings are for decision-making, action, and votes.
8		Board discussions should be concise and pertinent to the issue. If
9		a board member needs more information or has questions, either the superintendent or the board president is to be contacted
10		before the meeting. 73
10		12. Executive sessions will be held only when specific needs arise.  The board must be sensitive to the legal ramifications of these
11		meetings.
12		13. We agree to follow the process of adding items to the agenda, instead of bringing it up unexpectedly.
12		14. Reports to the board will focus primarily on accountability to the
13		Board and District Goals. 15. Per RCW 28A.343.400 and Policy 1733, board directors will
14		receive compensation for conducting business on behalf of Kent
15		School District. Any director may waive all or any portion of his or her compensation.
16	DD 1220	DUTIES OF INDIVIDUAL BOARD MEMBERS
	BP 1220	Per KSD BP 1220:
17		The authority of individual board members is limited to participating in
18		actions taken by the board as a whole when legally in session. Board
19		members will not assume responsibilities of administrators or other staff members. The board or staff will not be bound in any way by any action
		taken or statement made by any individual board member except when
20		such statement or action is pursuant to specific instructions and official action taken by the board.
21		Each board member will review the agenda and any study materials
22		distributed prior to the meeting and be prepared to participate in the
		discussion and decision-making for each agenda item."
23	<u>BP 1310</u>	POLICY REVIEW, ADOPTION, MANUALS, AND ADMINISTRATIVE PROCEDURES
24		A board policy is a formal expression of the judgment of the board
25		providing guidance or regulation for administrative action. Legislation

<sup>&</sup>lt;sup>73</sup> No Board member with questions was allowed to refer any inquiries to Board President Margel in advance of the meeting, because she didn't (and Director Tim Clark didn't) afford them that courtesy and knowingly violated Board director ethical duties that are required of them.

27

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		of new policies and the periodic review of existing policies are primary functions of the board.
3		Policy Adoption
4 5		Proposed new policies and proposed changes in existing policies will be presented in writing for reading and discussion. Unless the board
6		determines that immediate action would be in the best interests of the district, the final vote for adoption will take place not earlier than the next succeeding regular or special board meeting.
7		Any written statement by any person relative to a proposed policy or
8		amendment should be directed to the board secretary prior to the second reading. The board may invite oral statements from staff members or community members as an order of business.
9		When the board is considering a district policy or amendment to policy
10		that is not expressly or by implication authorized by state or federal law, but which will promote the education of kindergarten through twelfth
11		grade students in public schools or will promote the effective, efficient or safe management and operation of the district, the proposed policy
12		will be described in any notice of the meetings at which the policy will be considered, if the notice is issued pursuant to the Open Public
13		Meetings Act. Ch. 42.30 RCW the board will provide an opportunity for public written and oral comment on such policies before adoption or amendment.
14		In the event that immediate action on a proposed policy is necessary, the
15		motion for its adoption will provide that immediate adoption is in the best interest of the district. No further action is required. All new or amended policies will become effective upon adoption, unless a specific
16		effective date is provided in the motion for adoption.
17 18		Policies as adopted or amended will be made a part of the minutes of the meeting at which action was taken and will also be included in the district's policy manual.
19		Non-substantive editorial revisions and changes in administrative, legal, and/or cross references need not be approved by the board.
20		Policy Manuals
21		The superintendent will develop and maintain a current policy manual that contains the policies of the district.
22		The manual is intended as both a tool for district management as well as
23 24		a source of information to community members, staff, and others about how the district operates. To that end each administrator and each board member will have ready access to the manual. In addition, a manual will
		be available as the superintendent may determine for the use of staff, students and community members.
25		In addition, the complete text of the manual is available online at the
26		district's <u>website</u> and such other places as the superintendent may determine for the use of staff, students, and patrons.
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	EARIBIT	All policy was all distributed to appear will provide the property of the
3		All policy manuals distributed to anyone will remain the property of the district. They will be subject to recall at any time.
		Administrative Procedures
5		The superintendent will develop such administrative procedures as are necessary to ensure consistent implementation of policies adopted by the board.
6		When a written procedure is developed, the superintendent will submit it to the board as an information item. Such procedures need not be
7		approved by the board, though the board may revise them when it appears that procedures are not consistent with the board's intentions as
8		expressed in its policies. Procedures need not be reviewed by the board prior to their issuance; on controversial topics, the superintendent should request prior board consultation.
9		Legal
10		RCW 28A.320.015 - School boards of directors—Powers—Notice of adoption of policy.
11 12		RCW 42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings — Notice— Secret voting prohibited
13		RCW 28A.320.010 Corporate powers RCW 28A.320.040 Bylaws for board and school government
14	BP 1320	SUSPENSION OF A POLICY
	<u>BF 1320</u>	A policy of the board will be subject to suspension by a majority vote of
15 16		the members present, provided all board members have received notice of the meeting and provided notice included a proposal to suspend a
17		policy and an explanation of the purpose. If such proposal is not made in writing in advance of the meeting, a policy may be suspended only by a unanimous vote of all board members present.
18		Violation: Materials were not provided to Board Members 72-hours in
19		advance of the suspension of a policy, and the Public wasn't provided notice and the ability to decide whether or not to attend on a matter of
20		such significant importance such as the suspension or amendment to KSD Board policy.
21	BP 1400	MEETING CONDUCT, ORDER OF BUSINESS, AND QUORUM
22		The board will schedule its meetings in compliance with the law and as deemed by the board to be in the best interests of the district and
23		community. The board will function through (1) regular meetings, (2) special meetings, and (3) emergency meetings.
24		Regular Meetings
25		Regular meetings will be held at 6:30 p.m. on the second and fourth Wednesday of each month, with some exceptions, (e.g., months in which
26		only one regular board meeting is held due to scheduled school calendar breaks), in the boardroom of the Administration Center or at other times and places as determined by the presiding officer or by majority vote of
27		and planes as determined by the presiding officer of by majority vote of

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		the board. An agenda of the business that the board will transact will be
3		posted on the district website not less than twenty-four (24) hours in advance of the published start time of the meeting.
4		If the board adjourns to times other than a regular meeting time, notice of the meeting will be made in the same manner as provided for special
5		meetings. All regular meetings of the board will be held within the district boundaries.
6		If the board adjourns to times other than a regular meeting time, the board will provide notice of the meeting in the same manner as provided
7 8		for special meetings. All regular meetings of the board will be held within the district boundaries. In cases of emergency, fire, flood, earthquake, or other emergency, the board president may provide for a
9		location other than that of the regular meeting, a remote meeting with no physical location, or a meeting at which physical attendance is limited.
10		In the instances of remote or limited in-person meetings, the district will provide real-time telephonic, electronic, internet, or other readily
11		available means of remote access that do not require an additional cost to access the meeting.
12		The district will hold remote or physical attendance limited meetings only in cases of emergency declared by federal, state, or local
13		government, or in cases of local emergency, fire, flood, earthquake, or other emergency, and at such meetings will provide real-time telephonic, electronic, internet or other readily available means of
14 15		remote access that do not require an additional cost to access the meeting.
		Special Meetings
16 17		Special meetings may be called by the board president or at the request of a majority of the board members. A written notice of a special
18		meeting, stating the time and place of the special meeting and the business to be transacted, will be delivered to each board member.
19		Written notice also will be delivered to each newspaper and radio or television station that has filed a written request for such notices. Written
20		notice may be delivered personally, by mail, facsimile, or electronic mail.
21		The notice must be posted on the district's website unless the district 1) does not have a website, 2) employs fewer than ten full-time equivalent
22		employees; or 3) does not have an employee whose job description or employment contract provides a duty to maintain or update the website.
23		The district must also prominently display the notice at the main entrance of the district's headquarters as well as at the location of the
24		meeting if the meeting is held at a location other than the headquarters and is not held as a remote meeting. During a declared emergency that
<ul><li>25</li><li>26</li></ul>		prevents a meeting from being held in-person with reasonable safety, the district may post notice of a remote meeting without a physical location on the district website, or the website bested or shared by another.
20		on the district website, or the website hosted or shared by another

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		agency. All required notices must be delivered or posted not less than twenty four (24) hours prior to the meeting.
3		A board member waives the written notice requirement if that board member:
5		Submits a written waiver of notice to the board secretary at or prior to the time the meeting convenes. The waiver may be given
6		by telegram, fax, or electronic mail; or  2. Is actually present at the time the meeting convenes.
7		The board will not take final disposition on any matter other than those items stated in the meeting notice.
8		If the district calls a special meeting of the board to deal with an
9		emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such
10 11		injury or damage, or when the required notice cannot be posted or displayed with reasonable safety, including but not limited to declared
12		emergencies in which travel to physically post notice is barred or advised against, the board may meet immediately with no prior notice.
13		Emergency Meetings
14		If the district determines, by reason of fire, flood, earthquake, or other emergency, that there is a need for expedited action by the board to meet the emergency, the board president may provide for a meeting site other
15		than the regular meeting site, for a remote meeting without a physical location, or for a meeting at which the physical attendance by some or all members of the public is limited due to a declared emergency.
16		The board president may provide for an emergency meeting without
17		providing notice.
18		If, after the declaration of an emergency by a local or state government or agency, or by the federal government, the district determines that it cannot hold a board meeting with its members or with public attendance
19 20		in person with reasonable safety because of the emergency, the district will either:
		Hold a remote meeting without a physical location, or
21   22		2. Hold a meeting at which the physical attendance by some or all members of the public is limited due to the declared emergency.
23		Members of the board may appear at a remote meeting telephonically or by other electronic means that allows for real-time, remote
24		communication.
25		For a remote meeting or a meeting at which the physical attendance by some or all members of the public is limited due to a declared
26		emergency, the district must provide an option for the public to listen to the proceedings telephonically or by using a readily available alternative in real-time that does not require any additional cost for participation.
27		Free readily available options include, but are not limited to, broadcast

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	EXIIDII	by the public agency on a locally available cable television station that is
		available throughout the jurisdiction or other electronic, internet, or
3		other means of remote access that do not require any additional cost for access to the program. The district may also permit other electronic
4		means of remote access.
5 6		The district will provide notice for remote meetings or meetings at which the physical attendance by some or all members of the public is limited due to a declared emergency according to this policy. The notice
7		for meetings pursuant to a declared emergency must include instructions on how the public may listen live to proceedings and how the public may access any other electronic means of remote access
8		offered by the district.
9		The district will not take final disposition on any matter during a remote meeting or a meeting at which the physical attendance by some or all members of the public is limited due to a declared emergency unless the
10		district has provided an option for the public to listen to the proceedings, except for an executive session, pursuant to this policy.
11		Public Notice
12		The board will give proper public notice for any special meeting,
13		whenever a regular meeting is adjourned to another time. The board may provide notice for an emergency meeting in accordance with this policy.
14 15		All meetings will be open to the public with the exception of executive or closed sessions authorized by law. The board will take final action resulting from executive session discussions during a meeting open to the public as required by law.
16		Individuals with disabilities who may need a modification to participate
17		in a meeting and those who may have difficulty physically attending a meeting should contact the superintendent's office no later than three days before a regular meeting and as soon as possible in advance of a
18		special meeting so that special arrangements can be made.
19		During the interim between meetings, the office of the superintendent, as board secretary, will be the office of the board. The district's public
20		records will be open for inspection in the manner provided by and subject to the limitation of the law.
21		Quorum and Voting
22		A quorum consists of the majority of all board members. For school
23		boards with five members, three board members constitute a quorum. A quorum is required for the transaction of business, including voting.
24		Board members are not required to be physically present to attend a board meeting. Any or all board members may attend a board meeting and vote via any communication platform that provides real-time verbal
25		and vote via any communication platform that provides real-time verbal communication without being in the same physical location with those in attendance.
26		Additionally, any meeting held via a communication platform must: 1)
27		include proper notice with any required passwords or authorization

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	EAIIIDII	codes; 2) be known and accessible to the public; and 3) accommodate
3		any member of the public who wishes to participate.
		The board will take no action by secret ballot at any meeting required to be open to the public. Generally, the board votes on motions and
5		resolutions by "voice" vote, unless a board member requests to vote by oral roll call, in which case the board will do so. A motion passes when a
6		majority of those board members present and voting vote in favor.  However, a majority vote of <i>all</i> board members is required to elect or
7		select a superintendent or board officer and the board must vote on these matters by an oral roll call. The board will vote by an oral roll call whenever required by law.
8		Meeting Conduct and Order of Business
9		The board will conduct all board meetings in a civil, orderly, and business-like manner. The board uses <i>Roberts Rules of Order</i>
10		(Revised) as a guide, except when board bylaws or policies supersede such rules. During board meetings, board members will refrain from
11		communicating electronically (e.g., by electronic mail, text, social media) with their fellow board members.
12		The board will use the agenda to establish its regular order of business.
13		However, either the superintendent or a board member may request additions or changes in the prepared agenda, and the board may adopt a revised agenda or order of business by a majority vote of the board
14		members present. At a special meeting, the board may take final action only on that business contained in the notice of the special meeting.
15 16		It is unlawful for any member of the public to knowingly carry onto, or to possess on, any area of a facility being used for official school board
17		meetings, a dangerous weapon, including but not limited to a firearm, "nun-chu-ka sticks," "throwing stars," air gun or pistol, stun gun, or
18		other dangerous weapon as listed in RCW <u>9.41.280</u> . The board will ensure that signs providing notice of the restrictions on possession of
19		firearms and other weapons are posted at facilities being used for official meetings of the board.
20		Public Attendance and Comment
21		Any member of the public may attend board meetings, including individuals who do not live within district boundaries. The board will
22		not require people to sign in, complete questionnaires, or establish other conditions for attendance.
		The board recognizes the value of public comment on educational issues
23		and the importance of involving members of the public in its meetings.  In order to permit fair and orderly expression of public comment, with
<ul><li>24</li><li>25</li></ul>		the exception of emergency situations, the board will provide a period at or before every regular meeting at which final action is to take place for public comment.
		During the public comment period, visitors may address the board on
26		any topic within the scope of the board's responsibility. Public comment
27		may occur orally or through written comments submitted before the

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		meeting. Written comments must adhere to the standards of civility
3		discussed below and must be received 24 hours before the board meeting. All written public comments timely submitted will be distributed to each board member.
4		The board may structure the oral public comment period, including
5 6		determining the total time allotted for public comment and equally apportioning the minutes for each speaker. The board is not obligated to provide additional public comment time to accommodate everyone in
7		attendance who wishes to speak. Any structure the board imposes will be content-neutral.
8		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
9		can call them forward. When called forward, individuals will identify themselves and proceed to make comments within the time limits established by the board.
10		The board is not obligated to respond to questions or challenges made
11		during the public comment period and the board's silence will not signal agreement or endorsement of the speaker's remarks. The board may
12		control the time, place, and manner of public comment.
13 14		The board president may terminate an individual's statement when the allotted time has passed and may interrupt a speaker to require the same standard of civility that the board imposes on itself. Examples of uncivil
		omments include comments that:
15		Are an unwarranted invasion of privacy.
16		Are obscene or indecent pursuant to the Federal Communications
17		Act or any rule or regulation of the Federal Communications Commission.
18 19		Violate school district policy or procedure related to harassment, intimidation, or bullying of students, or policy or procedure related to nondiscrimination.
20		Incite an unlawful act on school premises or violate a lawful
		school regulation; or
21		Create a material and substantial disruption of the orderly operation of the board meeting.
22		The board as a whole has the final decision in determining the
23		appropriateness of all such rulings and can maintain order by removing those who are disruptive. However, the board recognizes the distinction
24		between uncivil discourse, which it will not tolerate, and comments about the board, district, and/or staff that are negative yet still civil in
25		nature. The board will exercise its authority to maintain order in a content-neutral manner.
26		In addition to the public comment period at the beginning of the meeting, the board will identify the agenda items that require or would
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	AUTHODITY OF	CURRORT FOR DETITIONED CARROLD ON DECATA
1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		benefit from opportunity for public comment and provide those opportunities as part of the meeting agenda before taking final action.
3 4		Individuals or groups who wish to present to the board on an agenda item are encouraged to request and schedule such presentations in
		advance.
5		Opportunity for public comment - both oral and written - is required before the board adopts or amends a policy that is not expressly or by implication authorized under state or federal law, but which will
7		promote the education of K-12 students, or will promote the effective, efficient, or safe management and operation of the district. Additionally,
8		the board will provide an opportunity for a representative of a firm eligible to bid on materials or services solicited by the board to present
9		about their firm.  Meeting Recordings
10		Effective June 30, 2024, all regular and special meetings of the board at
11		which a final action is taken or formal public testimony is accepted, except executive sessions, exempt sessions, or emergency meetings, will be audio recorded. Such recordings will be maintained for at least one
12 13		year. The recording will include the comments of the directors and the comments of members of the public if formal public testimony is
		accepted at the meeting.
14	BP 1420	PROPOSED AGENDA AND CONSENT AGENDA
15 16		The board secretary shall be responsible for preparing the agenda for each meeting, in consultation with the president. As of April 13, 2005, the Kent School District implemented the use of the internet to provide
17		access to school board meeting agendas and supporting documents.  Complete documentation of agenda materials is available from the Kent School District website at: https://www.kent.k12.wa.us/.
18		The agenda is available online at midnight the Friday evening preceding
19		the school board meeting. Individuals without computers are welcome to use any computer in the school district or local library. Printed copies of the agenda will still be available to any interested citizen at the
20		superintendent's office twenty-four (24) hours prior to the meeting. Copies of the proposed agenda, minutes of the previous meeting, and
21		relevant supplementary information will be provided to each board member at least seventy-two (72) hours in advance of the meeting and
22		will be available to any interested citizen at the superintendent's office twenty-four (24) hours prior to the meeting. Provided, however, that this
23		policy shall not be construed to prohibit the board from (1) Amending the regular meeting agenda to consider additional items, which may
24		include consideration of supplementary information at any time prior to formal action; nor, (2) Tabling or continuing a matter pursuant to
25		Roberts Rules; nor (3) Suspending notice requirements required herein, pursuant to Policy 1320.
<ul><li>26</li><li>27</li></ul>		At a special meeting, final action may be taken only on that business contained in the notice of the special meeting and agenda.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Consent Agenda
3		To expedite business at a school board meeting, the board approves the use of a consent agenda which includes those items considered to be routine in nature. The consent agenda will appear on the regular agenda.
5		Any item which appears on the consent agenda may be removed on request by a member of the board for discussion and subsequent voting. The remaining items may be voted on by a single motion. The
6 7		approved motion will be recorded in the minutes, including a listing of all items appearing on the consent agenda.
/		Public Comment
8		The board encourages and welcomes public comment from the community. The district will provide a variety of options in which the community may provide public comment to board members.
10		Legal
		RCW 42.30.080 Special meetings.
11		Cross References
12		1320 - Suspension of a Policy
13		1400 - Meeting Conduct, Order of Business, and Quorum
14		6020 - System of Funds and Accounts
		6215 - Voucher Certification And Approval
15 16	RCW 28A.320.015	Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and
17		shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall
18		provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors.
19		Resolution 1669 violates RCW 28A.320.015, which establishes that school directors cannot adopt written policies that are in conflict with
20		established law.
21	Chapter 42.30 RCW	No qualifying emergency existed for the immediate repeal of Resolution
22		1669, with no advance notice to all Board Members and the Public and an opportunity to decide whether to attend the meeting in-person or
23		provide written comment or video comment in advance if not able to attend in-person, per the OPMA. Chapter 42.30 RCW.
24	RCW 42.30.060	Ordinances, rules, resolutions.
25	RCW 42.30.240	Public comment. Except in emergency situation.
26	RCW 42.30.077	Agendas.
27		<u> </u>

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL	
WSSDA: Open	Surprise agenda amendments; Public comment periods.	
<u>Public Meetings</u>	"Surprise agenda amendments serve no one well."	
	(Agendas, p. 6)	
	"Public comment periods have First Amendment protections."	
	(Public Comment, p. 7)	
RCW 42.20.100	Failure of a duty by Public officer; willful neglect.	
	Margel acting on her own behalf; negotiating without reporting back to all Board Members (e.g., settlement offer in August 2024 in the litigation Nelson and Cook v. Kent School District No. 415, et al.)	

### X. CHARGE FIVE

(Unethical Conduct, Failure of a Duty to Act; Failure of a Fiduciary Duty to the Public;

Violations of Board Policy and District Procedures—including Procurement and

Contracting Failures; Violations of RCW 39.26.140; Violation of RCW 28A.400.315)

Board Director Clark committed acts of misfeasance, malfeasance, and/or violated his oath of office as identified in Sections III, IV, V and X herein.

A. Lack of Decorum and Civility on the Dais; Board Director Clark Unfit for Role as Director of KSD Board.

Below is an AI-generated summary of the 400+ comments posted on a September 11, 2024 social media post within the KSD Discussion Group on Facebook—there was a community group watch party of the September 11, 2024 regular meeting of the KSD Board, with live commenting from KSD Discussion Group members—including Recall Petitioners:

"The thread captures a live commentary of a KSD Board meeting focused on approving Superintendent Israel Vela's contract extension, spanning from 6:37 PM to 2:00 AM. Community members timestamped their reactions, revealing significant tension between the Public and the Board. The meeting began with procedural votes and public comments, many opposing the contract extension (Agenda item 6.02) due to overcrowded classrooms, staffing issues, and distrust in Vela's leadership. Critics questioned the contract's perks—like a \$5,000 travel stipend without receipts and mediation clauses—arguing they weakened board oversight and misused taxpayer funds.

Directors Song and Cook emerged as vocal skeptics during the meeting, challenging vague contract language, hidden negotiation processes led by Board President Margel, and the lack of data justifying Vela's performance. They faced resistance from Margel,

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Clark, and Farah, who pushed to approve the contract, often citing executive session discussions and dismissing concerns as "asked and answered."

Public frustration grew as Margel threatened audience members for clapping and Farah accused critics of racism, prompting outrage and calls for his recall. The debate intensified over hours, with Cook and Song unsuccessfully moving to table the vote, highlighting procedural inequities (*e.g.*, pausing for Farah's tech issues but not Song's medical break).

By 1:43 AM, the contract passed 4-0, with Cook abstaining, granting Vela \$394,000 in compensation—exceeding Seattle's superintendent despite KSD's smaller size and Vela's lack of Superintendent credentials. Commenters praised Cook and Song for representing the public, condemned Margel's opacity and Farah's insults, and expressed dismay at the board's dismissal of community input.

The thread reflects a broader narrative of distrust in KSD leadership, with calls for accountability, recalls, and levy opposition, ending with a mix of exhaustion and resolve among the 51 viewers still watching at 2:00 AM."

Director Clark's actions at this meeting involved actively supporting and voting for Vela's contract extension, despite legal and transparency issues, failing to challenge Margel's solo contract extension negotiation without approval of the Board, and he did not address Superintendent evaluation or bid and procurement and contracting irregularities—individual actions that Recall Petitioners argue are a breach of his fiduciary duty and oath of office, and a violation of his duty under RCW 28A.320.015 to act in students' and taxpayers' interests.

# B. Improper Individual Actions; Failure of a Duty to Act; Failure of Fiduciary Duty to the Public.

Director Clark allowed and attended improper Executive Sessions of the Board to occur, and did not provide the proper oversight of the District regarding the procurement of services of a consultant paid for using resources from the General Fund. He also voted on and approved an improper contract extension for Superintendent Vela that is in violation of law—a retroactive extension to an employment contract for a superintendent is not allowed by law, but Director Clark allowed the contract to proceed anyway with his vote and approval of the contract. Board Members must follow the law—improper meetings and violations of law in contracting with the District is a failure of a fiduciary duty to the Public and represents a lack of the appropriate oversight of the District by the Board.

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# C. Violations of Law and KSD Board Policies—including Bid and Procurement Process for Consultant Services.

The Board recognizes the importance of maximizing the use of District resources; the need for sound business practices in spending public money; *the requirement of complying with state and federal laws governing purchasing* and public works; the importance of standardized purchasing regulations; and the need for clear documentation. <u>BP 6220</u>. As described herein, the KSD Board and District are violating or not following existing Board Policies and Procedures, including Board Policy 6220.

# D. KSD's General Fund (GF) is Financed Primarily from Local Taxes, State Support Funds, Federal Grants, and Local Receipts.

The payments for consulting services performed and any contracts with Dr. Lawrence Nyland and/or Learning Unlimited have been paid using the District's General Fund.<sup>74</sup>

Per BP 6020—System of Funds and Accounts: "The General Fund (GF) is financed primarily from local taxes, state support funds, federal grants, and local receipts. These revenues are used specifically for financing the ordinary and legally authorized operations of the district for all grades, including programs of instruction for the students, food services, maintenance, data processing, printing, and pupil transportation. The GF is managed in accordance with special regulations, restrictions, and limitations. The GF constitutes an independent fiscal and accounting entity.<sup>75</sup>

# **E.** The District's Bid or Request for Proposal Requirements.

# 1. Capital Outlay Purchases.

Recall Petitioners reviewed District policies regarding contracting with the District, and it doesn't appear that a consultant to the District or its Board would fall under the category of a "capital outlay" purchase. Per <u>BP 6210</u>, a "Capital Outlay" includes capitalized and non-capitalized expenses and is divided into two sub-categories for RCW procurement purposes:

<sup>75</sup> See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=BS5UQH7D2B84.

<sup>&</sup>lt;sup>74</sup> See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C79LMB552E9B and https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CHCN4K5DF476.

1) Buildings, Repairs, and Improvements (public works) and

2) Supplies, Equipment, and Furniture.

Board approval for the purchase of capital outlay items is required when the aggregate total of a requisition exceeds \$25,000 except that the superintendent has the authority to make capital outlay purchases without advance approval when it is necessary to protect the interests of the district or the health and safety of the staff or students.

Recall Petitioners assume for this Recall Petition that the services of a consultant to the District would fit under the category of "Services" listed under the guidelines for the use of federal funds (which the District's General Fund contains)—for the services contemplated and as provided by Dr. Nyland and/or Learning Unlimited to Superintendent Vela and the District and to the KSD Board—and which were identified as being paid from the General Fund in Public-facing materials. The General Fund contains deposits of local and state tax revenue and federal grant funds. Recall Petitioners assume that the KSD and its Board would be required to use federal bid and procurement guidelines in contracting with independent consultants for the District (in the absence of any KSD Board policy that states otherwise, since the provision of "services" to the District is only mentioned under the description for the use of federal funds and not anywhere else in KSD Board policies that Recall Petitioners could locate in advance of the filing of this Recall Petition).

2. Purchases of Services When Using Federal Funds (from the General Fund).

Per BP 6220, when the District uses federal funds for the procurement of services:

- Purchases of \$10,000 or less do not require quotes. However, the District must consider price to be reasonable based on research, experience, purchase history, or other information and must document this determination. In addition, to the extent practical, purchases should be distributed equitably among suppliers.
- Purchases between \$10,000 and \$250,000 must be procured using price or rate quotations from a reasonable number of qualified sources.
- Purchases of \$250,000 or more must be publicly solicited using the District's formal bidding process.

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## 3. **Noncompetitive Procurement.**

Noncompetitive Procurement may be used <u>only</u> when one of the following five circumstances applies:

- Acquiring property or services that do not exceed \$10,000, or in the case of a school district who qualifies as a low-risk auditee in accordance with criteria in <u>2 C.F.R. § 200.520</u> or has documentation of an annual internal institutional risk assessment to identify, mitigate, and manage financial risks, \$40,000.
- The item is only available from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The awarding agency (e.g., OSPI) authorizes noncompetitive procurement in response to a written request from the district.
- After solicitation of a number of sources, competition is determined inadequate.

The district must maintain documentation supporting the applicable circumstance for noncompetitive procurement. BP 6220.

Upon information and belief (as of the October 23, 2023 report), the KSD is not a low-risk auditee in accordance with criteria in <u>2 C.F.R. § 200.520</u>, as determined by the state auditor, <sup>76</sup> which means that the self-certification thresholds identified in <u>BP 6220</u> do not apply for the District's procurement process (where purchases of \$50,000 or less would not require quotes). *But even if the District were considered a low-risk auditee, any contract purchases of more than \$50,000 would still require that the District to obtain quotes through a competitive bid procurement process with Board approval.* 

### 4. Additional Guidelines for Purchases Made with Federal Funds.

When purchases are made with federal funds, <u>BP 6220P</u> provides additional guidelines and procedures for the procurement process that must be followed:

<sup>&</sup>lt;sup>76</sup> See October 31, 2023 Washington State Auditor's Report on Financial Statements and Federal Single Audit at p.5: https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1033575&sp=false&isFinding=false&fbclid=Iw Y2xjawIeFAhleHRuA2FlbQIxMAABHe1fqjuc67O9dh-Jo0WsGaQf-uOBYl779Vo226XK-QAi1HQmt2Fo5wS4NQ aem iAQ G2WSBkiHgR-vy7LPgw.

- 1. The district will, to the greatest extent practicable, ensure that goods, products, or materials are produced in the United States (2 CFR 200.322).
- 2. When bids or competitive solicitation is required, the district will ensure that the requirements are not written in such a way as to prevent competition, such as specifying a name brand of item (2 CFR 200.319).
- 3. The district will ensure that there are enough qualified sources to ensure maximum open and free competition, and that potential bidders are not unjustly precluded from bidding (2 CFR 200.319).
- 4. All contracts shall include the following provisions in the contract language, as applicable (2 CFR Appendix II to Part 200):
  - A. It must address remedies for instances where a contractor violates the terms of the contract.
  - B. If in excess of \$10,000, it must include language addressing termination for cause.
  - C. It must include an Equal Employment Opportunity clause.
  - D. If the contract is for a public work project, language that the Davis-Bacon Act will be followed.
  - E. That the contractor, and any subcontractors, are not suspended or debarred from receiving Federal funding.
    - 5. Exemptions for Bid Procurement Process for Purchases.

The Board may waive bid requirements for purchases "clearly and legitimately limited to a single source of supply; involving special facilities or market conditions; in the event of an emergency; of insurance or bond; [or] involving public works in the event of an emergency." <u>BP</u> 6220.

"Emergency" means unforeseen circumstances beyond the district's control that present a real, immediate threat to the proper performance of essential functions or will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Whenever the board waives bid requirements, the board will issue a document explaining the factual basis for the exception and record the contract for open public inspection. BP 6220.

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1 2	6. Conflicts of Interest re KSD Purchasing and Contracting—Relations with Vendors.
3	No employee, officer, or agent m <u>ay participate in the selection, award, or</u>
4	administration of a contract supported by federal funds if he or she has a real or apparent
5	conflict of interest. Such a conflict would arise when the employee, officer, or agent, any
6	member of their immediate family, their partner, or an organization that employs or is about to
7	employ any of the parties indicated herein has a financial or other interest in or a tangible
8	personal benefit from a firm considered for a contract.
9	No employee, officer, or agent of the district may solicit or accept gratuities, favors, or
10	anything of monetary value from contractors or parties to subcontracts. Violation of these
11	standards may result in disciplinary action including, but not limited to, suspension, dismissal,
12	or removal.
13	Per <u>BP 6230</u> : "Financial and business transactions of the District will be carried out in
14	conformity with the law and consistent with sound and ethical business practices. Purchasing and
15	contracting decisions will be made on the basis of objectivity and will not be influenced by
16	friendships or other personal relationships."
17	"Neither board members, administrators, nor staff will solicit or accept a gift or favor
18	from vendors, prospective vendors, other firms, or individuals who have had or hope to have
19	transactions with the district."
20	Definition of "Vendor":
21	A "vendor" is a person (or an organization made up of such persons) who:
22	<ul> <li>is seeking official action by, is doing business or seeking to do business with, or is regulated by the employee's agency; or</li> </ul>
23	<ul> <li>has interests that may be substantially affected by performance or nonperformance of the employee's official duties.</li> </ul>
24	Definition of "Gift"
25	A "gift" is defined to mean anything of monetary value, and specifically includes
26	transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.
27	a asket, payment in an interior of remindred the expense has been mented.
- 1	d .

RECALL PETITIONERS GRETA NELSON MICHELE BETTINGER LORI WAIGHT

<sup>77</sup> See <u>BP 6230</u>.

F. Violation of <u>RCW 39.26.140</u> re Sole Source Contract—Development of Contract with KSD and Voucher Submissions for Payments Made to Independent Contractor Dr. Nyland through his Company "Learning Unlimited."

Dr. Nyland was first tasked with a review of KSD's Human Resources practices and implementation of the "Moss Adams report," with his work later clarified by the District as providing consulting services in a strategic or advisory capacity for board/superintendent governance—to support Superintendent Vela in his new role as the KSD's Superintendent.

Dr. Nyland advised Superintendent Vela in a professional development and strategy, and was also contracted (by Superintendent Vela) to consult with the Board on how to evaluate Superintendent Vela's job performance—including for the Board's development of the materials and rubric that was used to evaluate the Superintendent's performance. Superintendent Vela hired the same consultant he had used for his own professional development—to advise and train KSD Board Members on how to evaluate his performance which resulted in a contract extension, including additional benefits such as over \$23,000 placed into a tax sheltered annuity annually, in addition to putting in place an unbalanced and not well-defined mediation process for any disputes between the Superintendent and his employer—the KSD Board.

<u>Dr. Lawrence Nyland</u> and/or <u>Learning Unlimited</u> is a "vendor" and a contracting party of the KSD—that is doing business with the District. *Dr. Nyland has interests that may be* "substantially affected by performance or nonperformance of the employee's official duties."<sup>77</sup>

Dr. Nyland has an interest in the results of the KSD Board's evaluation of Superintendent Vela, as he has been working with or training Superintendent Vela and guiding his professional development since at least October 2021. A poor review of the Superintendent would be a direct reflection on Dr. Nyland's job performance in preparing Superintendent Vela for his role in leading the District.

To the community, it doesn't make sense to hire a Superintendent that doesn't already have the necessary skills to run the organization (Superintendent Vela does not have "Superintendent" credentials) and should not have been hired for the permanent Superintendent position with the KSD in the first place (the community was against it); the fact that a consultant was necessary to prop up Superintendent Vela's lack of skills does not sit well with a community that provides a very generous compensation and benefits package to the Superintendent of the KSD.

The Public has, thus far, had to pay for two people to fill the Superintendent role (Israel Vela and Larry Nyland)—with no transparency about Dr. Nyland's services to both the Superintendent and the Board—which is a significant conflict of interest in regards to the Superintendent evaluation process and resulted in a contract extension with additional compensation to an underperforming Superintendent that wasn't justified.

Dr. Nyland provided services first (receipt of services by the District with no contract), and then sought reimbursement from the District. Superintendent Vela, an employee, officer or agent of the District benefited and accepted services from Dr. Nyland in violation of BP 6230 (before a contract was eventually entered into).

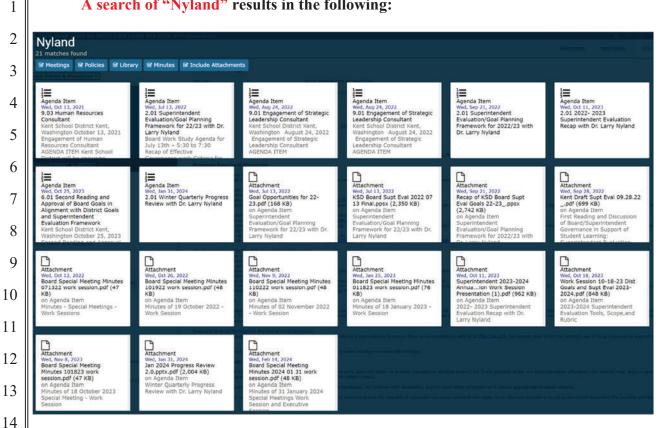
All services provided by Larry Nyland or Learning Unlimited between October 2021 and before March 7, 2023 were performed without a contract and without following any bid procurement process.

See KSD Public Records Officer's response to Lori Waight email regarding no contract, and Daman Hunter (KSD's Associate Superintendent of Human Resources) exchange with Ms. Waight at **EXHIBIT 24**—Dr. Nyland wasn't hired with an employment contract as a consultant—(BP 5050)—and there was no vendor contract that followed the required bid procurement and contracting process for vendors doing business with the District. See BP 6220 and 6220P.

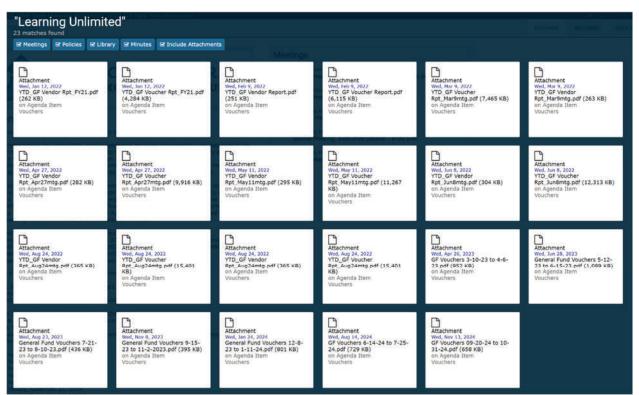
The services were paid for using the General Fund, which contains local and state tax revenue and federal grant funds. And despite Superintendent Vela entering into a contract on

<sup>&</sup>lt;sup>78</sup> See <a href="https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=BV2VR781E1D5">https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=BV2VR781E1D5</a>.

## A search of "Nyland" results in the following:



## A search of "Learning Unlimited" results in the following:



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2. October 13, 2021—"Information" Agenda item for Consultant Dr. Larry Nyland; No Contract provided for Review and Approval (up to \$75,000 paid for from General Fund).

After Israel Vela was appointed Interim Superintendent (upon Dr. Watts' resignation effective August 1, 2021), he improperly secured the services of third party independent contractor, Dr. Nyland and his company "Learning Unlimited," to provide strategic leadership guidance and human resources consulting to the District. No contract was presented to or reviewed by the Board, or entered into with the District for Dr. Nyland's services at this time.

Dr. Lawrence Nyland (of Learning Unlimited) first appears on records available on <u>KSD</u>

<u>Board Docs</u> for the October 13, 2021 regular meeting of the Board, on the Agenda under 
"Information" (Israel Vela was Interim Superintendent at this time):

### Agenda Description:

Kent School District will be engaging the services of <u>Dr. Larry Nyland</u> as human resources consultant. Dr. Nyland will provide strategic leadership consulting for the Human Resources Community, including, but not limited to, navigating challenges, improving outcomes, and amplifying operational successes.

# **Budget Implication:**

"The cost of the consultation is <u>not to exceed \$75,000</u>, including all taxes and fees, and will be paid from the district's general fund budget."

No contract was provided with this agenda item, and by the District response provided by a KSD Public Records Officer to Lori Waight, as described later in this Section, it was later learned by Recall Petitioners that no contract existed at this time for Dr. Larry Nyland's services.

# Vouchers for KSD payments to Learning Unlimited after October 13, 2021 (but before the next agenda item for additional funds to Dr. Nyland) were as follows:

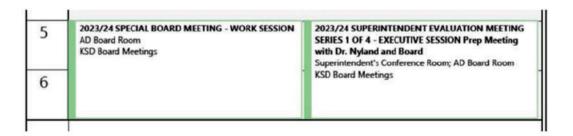
Date of		General Fund	Running Total Paid to
Payment	Check Number	Check Amount	Nyland this period
2021 <b>-11-24</b>	185104	8,784.00	8784.00
2022-01-06	185550	8,718.00	17,502.00
2022 <b>-02-03</b>	185936	4,898.00	22,400.00
2022-03-10	186432	8,755.00	31,155.00
2022-03-24	186641	7,968.00	39,123.00
2022-06-30	188102	21,635.00	60,758.00
2022-07-07	188218	14,342.00	75,100.00

Date of		General Fund	<b>Running Total Paid to</b>
Payment	Check Number	Check Amount	Nyland this period
2023-03-16	191755	34,083.00	34,083.00
2023-06-15	193200	11,218.00	45,301.00
2023-08-03	194125	17,674.00	62,975.00
2023-12-14	196287	1,375.00	64,350.00

5. May 15, 2024—Improper Executive Session with Dr. Nyland to Discus Superintendent Evaluation Materials; Failure of a Duty to Act; Public Records Act Violation and Related Lawsuit; OPMA Violation and Related Lawsuit.

A consultant's instructions and process overview exceed the permissible scope of an executive session under the OPMA. The May 15, 2024 Executive Session of the KSD Board that Dr. Nyland attended was not limited to reviewing the performance of an employee and did not fit any other exception to the openness requirements of the OPMA. See EXHIBIT 18 (OPMA Lawsuit of Joseph Riley and Allison Riley v. Kent School District and Kent School District Board of Directors, KCSC Case No. 24-2-21648-1 KNT, Amended Complaint at Dkt. 7, and in particular, ¶, 3.19, 3.20, 3.50, 4.1-4.6)—this case is ongoing. As of the date of the May 15, 2024 improper Executive Session, no contract existed for Dr. Nyland's services for the 2023-2024 school year. The contract for services provided for the 2023-2024 school year was entered into after this date, on May 22, 2024, and retroactively covered services provided by Dr. Nyland that occurred before May 22, 2024—a violation of procurement processes.

On Superintendent Vela's calendar for May 15, 2024 (obtained by Joseph and Allison Riley, "the Rileys" via Public Records Request), an entry described a "Prep Meeting with Dr. Nyland and Board" kicking off a series of superintendent evaluation meetings, as shown on the following screenshot):



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The Rileys grew concerned about the scope of the closed May 15 meeting and on July 30, 2024 Joseph Riley made a public records request to the KSD for "all records related to the School Board's executive session on May 15, 2024, including by not limited to any notices, meeting notes, materials distributed or presented at the meeting, and any communications to or from board members discussing or referring to the executive session (before or after May 15). The district initially claimed the records were wholly exempt from disclosure, but upon reconsideration, the district produced the materials to Mr. Riley without redactions on August 30, 2024. *Id.* 

Upon information and belief, members of the KSD Board engaged in deliberations, discussions, considerations, reviews and/or evaluations of the following during a closed meeting of a majority of the KSD Board on May 15, 2024:

- 1. Dr. Nyland's PowerPoint (the topics in the presentation exceeded the permissible scope of an Executive Session under the OPMA);
- 2. A blank "Summary Rating Sheet" to be used for evaluating Superintendent Vela (the rating sheet had blank spaces for the Board's ratings and self-ratings);
- 3. A 36-page blank rubric (discussing a blank rating sheet or blank rubric, rather than the scores to be filled in, is beyond the permissible scope of an Executive Session under the OPMA).

In response to his public records request, Mr. Riley received a document entitled "2023-2024 Superintendent Evaluation Timeline" which laid out District's plans for a combination of closed and open meetings of the KSD Board on May 15, May 29, June 5, June 11 and June 26, 2024.

The OPMA does not authorize a preliminary discussion of an employee evaluation process to be held behind closed doors. A consultant's instructions and process overview exceed the permissible scope of an executive session under the OPMA; the KSD Board was required to limit its May 15 closed meeting to a permissible purpose under RCW 42.30.110, but failed to do so. Id. (emphasis added).

The public had a right to observe Dr. Nyland's PowerPoint presentation to the KSD Board on May 15, 2024. There is no broad exception to the OPMA for talking about "personnel"

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and that closed personnel discussions must be targeted to evaluating qualifications of a job applicant or reviewing an employee's performance. The May 15 meeting was described as purely preliminary, without any discussion of performance ratings. *Id.* 

Violation: Larry Nyland advising the Superintendent in a consultant capacity, and also advising the Board in a consultant capacity (on how to evaluate the Superintendent), is a conflict—the Board and Superintendent spent time with this consultant in meetings closed to the Public, in violation of the OPMA (and without a contract with Dr. Nyland or Learning Unlimited for the 2023-2024 school year in place). See EXHIBIT 18 and EXHIBIT 24 (June 12, 2024 Lori Waight Email re Larry Nyland and Superintendent and Consultant for Superintendent—and Consultant for KSD Board on how to Evaluate Superintendent).

> 6. May 22, 2024—Improper Retroactive Contract with Dr. Lawrence Nyland / Learning Unlimited for 2023-2024 School Year (up to \$50,000 paid for from General Fund)

### Vouchers for KSD payments to Learning Unlimited were submitted as follows:

Date of		General Fund	Running Total Paid
Payment	Check Number	Check Amount	to Nyland this period
2024-07-11	199366	27,037.00	27,037.00
2024-10-03	600738	1,911.00	28,948.00

7. Total Paid to Date by the District for Dr. Nyland's Services.

As of the date of this Recall Petition, and according to publicly available documentation on KSD Board Docs, the total amount spent on Dr. Nyland's (Learning Unlimited) services between October 2021 to present is \$168,398.00.

> No Contract Exists Between the KSD and Dr. Nyland for Services 8 Provided for the 2024-2025 School Year.

Contracts of the KSD must be for a stated period of time that is defined within the contract per the District's own policies, and to abide with state and federal procurement requirements. The last known contract to exist with Dr. Nyland, dated May 22, 2024, is for the **2023-2024 School Year**. Dr. Nyland was paid \$1,911.00 on October 03, 2024 and no contract

exists for that payment, according to the information available publicly on KSD Board Docs and from limited records received in response to Public records requests. 2 9. Timeline. 3 4 TIMELINE REGARDING 5 CONSULTANT DR. LAWRENCE NYLAND / LEARNING UNLIMITED & THE DEVELOPMENT OF SUPERINTENDENT CONTRACT AND EXTENSION 6 (See EXHIBIT 24) 7 Israel Vela appointed as Interim Superintendent at a regular meeting of August 2, 2021 the Board on August 4, 2021 (with an effective date of August 2, 2021). 8 Dr. Watts resigned August 1, 2021. 9 https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C5E4TF0 D196A 10 October 13, 2021 11 12

# ENGAGEMENT OF HUMAN RESOURCES CONSULTANT

"Kent School District will be engaging the services of Dr. Larry Nyland as human resources consultant. Dr. Nyland will provide strategic leadership consulting for the Human Resources Community, including. but not limited to, navigating challenges, improving outcomes, and amplifying operational successes."

# **Budget Implication:**

"The cost of the consultation is **not to exceed \$75,000**, including all taxes and fees, and will be paid from the district's general fund budget."

### Agenda

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## Listed on Agenda as "information"

https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C79LMB 552E9B

### Minutes

https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/C883AG05EBF0/\$fi le/Board%20Minutes%20101321.pdf

### Informational

- Renewal OETC (Adobe Creative Cloud.
- Human Resources Review.
- Human Resources Consultant.

Roll Call not listed on Minutes, but the Minutes and Board Reports reflect the following in attendance at the Meeting:

> Leslie Hamada Joseph Bento Maya Vengadasalam Denise Daniels, Board President Michele Bettinger, Vice President

PETITION FOR THE RECALL OF A BOARD DIRECTOR. OF KENT SCHOOL DISTRICT NO. 415 - 120

RECALL PETITIONERS GRETA NELSON MICHELE BETTINGER LORI WAIGHT

1 2	TIMELINE REGARDING  CONSULTANT DR. LAWRENCE NYLAND / LEARNING UNLIMITED & THE DEVELOPMENT OF SUPERINTENDENT CONTRACT AND EXTENSION			
3	(See EXHIBIT 24)			
4		Israel Vela, Interim Superintendent		
5		No contract for review, no Board vote for approval of the "not to exceed \$75,000" expense by KSD Board.		
6 7	June 8, 2022	At the June 8, 2022 regular meeting of the Board, the KSD Board reviewed the 2021-22 Moss Adams Report regarding Continuous Improvement Review of KSD Human Resources. A "budget implication" of \$68,000 for the HR systems review by Moss Adams.		
8		https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CEJMTV 5C8415.		
10	June 21, 2022	Recall Petitioner Michele Bettinger submitted her written resignation from the KSD Board due to unethical and bullying behavior she had received from her fellow Board Directors (after the November 2021		
11 12		election, the Board was then comprised of the following Directors: Leslie Hamada, Awale Farah, Tim Clark, Joseph Bento, and Michele Bettinger.		
13		Ms. Bettinger did not want to have "her name" on anything further as a result of the poor conduct of the majority of the Board at this time—that was not acting in the best interests of the community.		
14 15		Ms. Bettinger also objected to participating in and voting on the Superintendent Contract for Israel Vela at the June 22 regular meeting, the next day.		
16 17		Ms. Bettinger viewed the SharePoint site for the Superintendent contract prior to submitting her resignation, and the contract to be voted on the next day (less than 24 hours later), was not available to		
18		Board members that she could locate at that time.		
19		It is assumed that Leslie Hamada, as then-Board President, negotiated the Superintendent contract without parameters set by the full Board in		
20 21		advance. Ms. Bettinger (as a member of the full Board) was not included or involved any way for the negotiation of the terms of the Superintendent Contract, or for setting of parameters for the negotiations for any representative or spokesperson of the Board.		
22 23	June 22, 2022	Superintendent Vela's date of original Contract, approved by the Board and signed by then-Board President Leslie Hamada.		
24		See EXHIBIT 23.		
	August 24, 2022	On Agenda as "information"		
25 26		Informational  9.01 - Engagement of Strategic Leadership Consultant		
27		Engagement of Strategic Leadership Consultant:		

#### TIMELINE REGARDING CONSULTANT DR. LAWRENCE NYLAND / LEARNING UNLIMITED & 2 THE DEVELOPMENT OF SUPERINTENDENT CONTRACT AND EXTENSION (See EXHIBIT 24) 3 "Kent School District will be engaging the services of Dr. Larry Nyland. 4 Dr. Nyland will provide strategic leadership consulting, including but not limited to, continuing to provide support for board-superintendent 5 governance. Additionally, Dr. Nyland will be assisting with Human Resources' leadership transition and implantation of the Moss Adams' 6 Report." **Budget implication:** 7 "The cost of the consultation is not to exceed \$75,000, including all taxes and fees, and will be paid from the district's general fund budget." 8 No contract, no approval of expense by KSD Board 9 **Board Meeting Minutes** August 24, 2022 10 The Board of Directors of Kent School District No. 415 met in meetings on Wednesday, August 24, 2022, beginning at 6:30 p.m. in the Board Room of the Administration Center located at 12033 SE 256th Street, Kent, 11 Washington. Click here to view the meeting. 12 President Leslie Hamada called the regular meeting to order at 6:31 p.m. Roll Call resident Hamada: Present 13 Vice President Bento: Present Director Farah: Present 14 \*Also present: Board Secretary, Superintendent Vela 15 Agenda 16 https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CHCN4K 5DF476 17 Presentation by Larry Nyland Regarding Superintendent September 21, 2022 Evaluation / Goal Planning Framework for 2022/23 18 https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fg 19 o.boarddocs.com%2Fwa%2Fksdwa%2FBoard.nsf%2Ffiles%2FCJGU5 D7A5CEA%2F%24file%2FRecap%2520of%2520KSD%2520Board%2 20 520Supt%2520Eval%2520Goals%252022-23 .ppsx&wdOrigin=BROWSELINK 21 Agenda Item Details 22 Meeting Sep 21, 2022 - Special Meeting: Work Session - 5:00 p.m. Category Discussion 23 Subject Superintendent Evaluation/Goal Planning Framework for 2022/23 with Dr. Larry Nyland Information, Presentations Type 24 Recap of KSD Board Supt Eval Goals 22-23\_.ppsx (2,742 KB) 25 26

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1 2	TIMELINE REGARDING  CONSULTANT DR. LAWRENCE NYLAND / LEARNING UNLIMITED & THE DEVELOPMENT OF SUPERINTENDENT CONTRACT AND EXTENSION		
3	(See EXHIBIT 24)		
4 5	October 13, 2022	Lori Waight submits Public Records Request (FOIA request for the contract(s) to engage with Larry Nyland. Agenda item 9.01 August 24, 2022.	
6 7	October 25, 2022	Tyler Inboden, Public Records Officer responds to Ms. Waight's October 13 records request re Larry Nyland contract(s): "There is no contract for this individual's services. However, please see attached link related to the request."	
9		https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CHCN4K 5DF476	
10	October 25, 2022 November 2, 2022	Lori Waight emails Daman Hunter (Associate Superintendent of Human Resources) to ask for details regarding HR process/procedures as to contracts [and the lack of clear procedures/process].	
12		Ms. Waight follows up with Mr. Hunter on November 2, 2022 and he responds the same day that it would not be appropriate for HR to release the information Ms. Waight was seeking.	
13 14 15		Ms. Waight replies to Mr. Hunter: "Are you saying no parameters/time frame exists on this consulting fee? These are public funds that *usually* require a contract, no? Again, what is HR protocol as it pertains to contracts for consultants?"	
16 17	November 3, 2022	Lori Waight forwards the email exchange with the District to the Washington State Auditor's office after a telephone conversation with Shirley Christiansen, Assistant Audit Manager.	
18	March 7, 2023	KSD Contract SO230301P	
19		Agreement for Contractual Services between KSD and Larry Nyland / Learning Unlimited, signed by Superintendent Vela, for the 2022-2023	
20		school year, "to provide support consultation and facilitation to strengthen executive leadership and system effectiveness"—for up to \$60,000.	
21		No approval of expense by KSD Board	
22	May 15, 2024	Improper Executive Session (that is now subject to an OPMA	
23 24		lawsuit). Dr. Larry Nyland presents to the Board in executive session (not to discuss evaluation results, which is allowed to be a closed session of the Board, but the actual evaluation materials and rubric were discussed, which should have been done at an open Public meeting.	
25	May 22, 2024	KSD Contract SO240501P	
26 27		Contractual Services Agreement effective May 22, 2024 for 2023-2024 School Year between Kent School District and Dr. Lawrence Nyland / Learning Unlimited to "provide support consultation and facilitation to	

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1	TIMELINE REGARDING		
2	CONSULTANT DR. LAWRENCE NYLAND / LEARNING UNLIMITED & THE DEVELOPMENT OF SUPERINTENDENT CONTRACT AND EXTENSION		
3		(See EXHIBIT 24)	
4		strengthen executive leadership and system effectiveness with staff and board members for the 2023-2024 school year"— <u>for up to \$50,000</u> .	
5		No approval of expense by KSD Board	
6	June 12, 2024	Lori Waight emails Board President Margel, and copies Directors Song, Cook, Clark, and Farah with subject line "Nyland Contract."	
7 8		A. Lack of Contract and Improper Contract Paid Out of District's General Fund; Failure of a Duty to Act.	
9		On June 12, 2024, Recall Petitioner Lori Waight sent an email to Board President Margel with cc's to Directors Andy Song, Donald Cook, Tim Clark, and Awale Farah with a subject line stating "Nyland Contract."	
10		See EXHIBIT 24 (June 12, 2024 Lori Waight Email re Nyland Contract). a contract was drafted and entered into with Larry Nyland for	
11 12		the 2023-2024 school year, on May 28, 2024, but there is no contract for the work prior to the 2023-2024 school year with Superintendent Vela, and the Board did not approve the May 28, 2024 contract with Larry	
13		Nyland as required by the KSD's own policies and procedures.)	
14 15 16	June 12, 2024	Board Director Donald Cook forwarded Ms. Waight's June 12 email to his fellow Board Members with a request to "DO NOT REPLY-ALL" (due to OPMA concerns, presumably) and shared his concerns with his fellow Board members regarding the lack of discussion and approval of the Larry Nyland expense — and his understanding that anything over \$50,000 needs to be brought before the Board (with a request to correct him if he was wrong in that understanding).	
17	September 11, 2024	Regular Meeting of the Board—Superintendent Contract Extension	
18	September 12, 2024 September 12, 2024	This meeting began at 6:30 p.m. on September 11 and continued until 2:00 a.m. on September 12, 2024.	
19		See EXHIBITS 23 & 31.	
20		https://app.leg.wa.gov/rcw/default.aspx?cite=28A.400.315	
21		YouTube Link to Meeting: https://www.youtube.com/watch?v=CvD-YsK_Si4	
22	February 12, 2025	During a discussion of <u>BP 5050</u> at a Board meeting and work session,	
23		Director Clark inquired about the amount of consultant contract needing KSD Board approval—he wanted to have that information included in	
24		the policy. Board President Margel doesn't ask for clarification of the question, or for it to be answered by District officials (the amount	
25		requiring approval) and quickly moves on by stating the Policy would be moved to another work session for further discussion.	
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1	G. Violation of RCW 39.26.140 re Sole Source Contract—Apptegy (replacement
2	of communication platform, including website).
3	The District added to the April 24, 2022 Agenda of a regular meeting of the Board, the
4	review and approval of a contract with Apptegy for the District's replacement of its
5	communication platform, including the District's website. <sup>79</sup>
6	The Apptegy contract is one example of an sole source contract being improperly
7	procured by the District and approved by the Board.
8	Kent School District Communication Platform Software Agreement with Apptegy
9	AGENDA ITEM:
10	To support communication systems coherence and improve the accessibility of
11	information and services by communicating with families in their home language, a priority initiative was identified to evaluate and implement enhanced tools for unified
12	communications.
13	A team of twelve staff members representing Athletics & Activities, Communications, Customer Support Center, Data Services & Support, Information Technology,
14	Interpretation & Translation Services, Principals, Public Records, Software Review Committee, and Teachers have met since November 2023 to actualize this priority
15	initiative. Over twenty requirements were identified as necessary to improve family and staff engagement encompassing school and district websites, mobile app, social media,
16	mass communications including "robo calls," email, and text, school and classroom communications with two-way translation capabilities.
17	The team researched tools and identified three companies for demonstrations. From the
18	demonstrations, two companies were chosen for user testing conducted by district and school staff and parents. The recommendation from the team after user testing is Apptegy. This tool can be translated into 130 languages and means that our families will
19	have one trusted source of communication, instead of checking multiple platforms.  Apptegy also provides unlimited 1:1 training and support for the lifetime of the
20	agreement.
21	The implementation of this tool will impact communications across the district including translation services. The tool can create newsletters, forms, and surveys and translate into
22	130 languages with the push of a button. Apptegy provides an advanced translation service to ensure quality translations. Over 4,000 school districts across the nation have
23	implemented Apptegy including Spokane Public Schools in our state.
24	BOARD GOALS:
25	Goal 2: Expanding Student, Family, and Community Partnerships
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27	79 See A ganda at https://go.hoarddoos.com/yya/kadyya/Poerd.ngf/gota?onan&id=D4EIOT4E152D

 $^{79}~\textit{See}~\textit{Agenda}~\text{at}~\underline{\text{https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open\&id=D4EJQT4E152D}}.$ 

### **BUDGET IMPLICATION:**

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The recommended vendor has provided a service agreement to include Mobile App Development, Custom Web Development, Alerts, Publishing Platform with two-way messaging, and Training for a total of \$63,500 under the 2023-24 Communications Budget for development and \$159,650 from the 2024-25 Technology Subscription Budget for continuing use.

Community member, Joseph Riley, submitted inquiries to the Communications Department and KSD Board and later exchanged emails with the KSD's Public Records Officer and State Auditor's office. The email exchanges and additional documentation regarding the sole source procurement of Apptegy are attached at EXHIBIT 35 (Joseph Riley Emails and Documentation Obtained via Public Records Request regarding Sole Source District Contract— Apptegy).

A majority of the Board, including the individual vote of Board Director Clark approved a contract that did not follow the proper bid and procurement process and District officials appear to skip internal review processes the ensure the appropriate vetting and competition of third party service providers and for determining which vendor is awarded the bid. Additional detail and context a t **EXHIBIT 35**.

Superintendent Vela's Evaluation Process Not Transparent; Contract Terms H. Not in the Community's Best Interests.

Recall Petitioner Michele Bettinger has long advocated for transparency in the process, and for the KSD to actually follow the processes that are currently in place, for the evaluation of the Superintendent and any related contract or extension. See **EXHIBIT 26** (Multiple Michele Bettinger Emails re Superintendent Evaluation and Contract—May 4, 2024; November 6, 2024; December 9, 2024; January 31, 2025).

I. KSD's Strategic Plan and the Measures for Evaluation of the Superintendent.

The District's Strategic plan lists out 39 measures for evaluating the Plan's performance. Out of the 39 measures, Superintendent Vela only provided data for 17 of them. Over half of the measures had no data for the 23-24 school year. Out of the 17 measures with data provided

by the Superintendent: 7 moved in the right direction, 4 moved in the wrong direction, and 6 stayed the same. So *only 41% of the provided measures showed any progress* toward the final target. However, this is a five-year plan with a clear target, which means each measure should have progressed 1/5 of the way towards their target. *Out of the 7 measures that showed progress, only 4 are on track to meet the target*.

So, Superintendent Vela provided data on less than half the measures, less than half of those provided measures showed progress, and only 4 measures showed as on track for the 5-year target. Yet the KSD Board decided to give him three proficient ratings, a raise, and a contract extension.

How did the Board justify three proficient ratings in the evaluation? Why did the Board opt for a two-year contract instead of giving one more year to show progress? How could the Board possibly justify a 15% raise? See **EXHIBIT 22** (Superintendent Vela's Board Evaluations for 2022-2023, 2023-2024, and his Self-Evaluation) and **EXHIBIT 28** (Joe Riley Emails re Strategic Plan, Superintendent Evaluation Contract Extension). See also **EXHIBIT 18** (Joseph Riley and Allison Riley Amended Complaint re OPMA Violations Related to Superintendent Evaluation).

During the September 11 regular meeting, the KSD voted on Superintendent Vela's contract extension. A copy of Superintendent Vela's original contract and its extension are attached at <a href="EXHIBIT 23">EXHIBIT 23</a> (Superintendent Vela's Original Contract and Extension). See also <a href="EXHIBIT 31">EXHIBIT 31</a> (September 17, 2024 Kent Reporter Article re Superintendent Contract Extension).

Superintendent received "Proficient" ratings, a \$56k/year raise, and a two-year contract extension. Strategic plan measures only show 11 of 39 measures with positive growth, and only 4 on track to their five-year target.

The extension includes, but is not limited to the following terms that are not favorable to a community displeased with the lack of leadership skills (among other deficiencies) from Superintendent Vela. [see EXHIBIT 23 (Superintendent Contract and Extension)]:

- 1. A mediation process set up to benefit the District and Superintendent it removes the ability for individual Board Members to petition the government for the redress of grievances; procedural roadblocks of an unfair mediation process, including a not very well defined selection process for the mediator (calendar days versus business days are not defined, and if a notice of a mediation is provided on a Friday, the joint mediator selection effort would have only 3 business days of the next week for the parties to agree on the assignment of the mediator, who is not likely to have availability for a mediation on such a short notice), as identified in the extended contract.
- 2. Section 3 (+\$6,000).
- 3. Section 4 (additional 10-day vacation time cash out available annually).
- 4. Section 5 (provides +3 flex leave days and +2 on-call leave days).
- 5. Bonus of over \$23k to Tax Sheltered Annuity.
- J. Conflict of Interest with Legal Counsel for the District and Board—Who Does Curtis Leonard Represent if or when the Kent School District and its Board are in Dispute, and in Particular, if Any Litigation Resulted from the Superintendent Contract or Extension?

If the District and Board is in dispute—will outside counsel Curtis Leonard represent the interests of the District or its Board? Curis Leonard and Board President Margel negotiated the contract terms for the extension. The extension terms are a bad faith attempt by Board President Margel (and Superintendent Vela) to further attempt to silence individual Board Members and the contract term diminish the authority of the Board over its one employee, the Superintendent. Mr. Leonard cannot, in good faith, advise both sides of the dispute. The KSD Board does not have independent legal counsel.

K. Superintendent Contract Extension Violates RCW 28A.400.315— Employment Contracts.

Employment contracts entered into between an employer and a superintendent, or administrator as defined in RCW 28A.405.230, under RCW 28A.400.010, 28A.400.300, or 28A.405.210:

- (1) Shall end no later than June 30th of the calendar year that the contract expires except that , a contract entered into after June 30th of a given year may expire during that same calendar year; and
- (2) Shall not be revised or entered into retroactively.

The individual vote of Board Director Margel, Clark caused a KSD contract to be entered into that was in violation of law. *The Superintendent's Contract Extension was* approved by a majority of the Board on September 11, 2024—but it was *entered into retroactively*, with an effective date of July 1, 2024, which is a violation of RCW 28A.400.315(2).

# L. Public Records Act Violations of the District; Joint Legislative Audit and Review Committee (JLARC).

Each agency (school district) shall maintain a log of public records requests submitted to and processed by the agency, which shall include but not be limited to the following information for each request: The identity of the requestor if provided by the requestor, the date the request was received, the text of the original request, a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request. The log must be retained by the agency in accordance with the relevant record retention schedule established under this chapter, and shall be a public record subject to disclosure under Chapter 42.56 RCW. See also RCW 40.14.026 re JLARC.

If the agency adopts and diligently follows policies, trains its staff, and provides adequate funding for records management and records request processing, the court is likely to reduce the penalty amounts. On the other hand, if the agency does not have an effective system in place, the court is likely to increase penalty amounts. In a 2022 case, the Court of Appeals sent a case back to the trial court to reassess the penalties awarded (Cantu v. Yakima School District No. 7 (2022)). The court said that the agency failed to train its personnel, provide adequate staffing, and prioritize public records requests despite having a budget surplus. *See MRSC: Knowing the Territory* at p. 30.

For many years, the Public Records Department at the District has been in chaos—the Department has not consistently followed processes and procedures, has made inadvertent disclosures, has provided arbitrary responses to records requests, and there has been no consistency when the District charges the Public for records and when it does not. Due to the District's size, it is required to report to JLARC (but wasn't reporting for a period of time). The

public records log for the KSD has not been kept up to date and many entries are lacking full information for the request.

Public Records Act violations are costly and expose the District to significant legal risk and expense. The District recently settled out of Court with community members Joseph and Allison Riley related to the district withholding records (Superintendent Vela's evaluation and related materials). See Joseph Riley and Allison Riley v. Kent School District, KCSC Case No. 24-2-07650-6 KNT. This PRA lawsuit was settled out of Court after the District produced the requested records, but it first objected to the release of the materials, causing the litigation as a result, and having to make a settlement payment—in addition to providing the materials that should have been provided in the first place.

A former KSD employee, Tyler Inboden (former Public Records Officer), has been assisting the Kent School District with responding to Public Records Requests, but is not currently a District employee and has not been paid for that work. *See* **EXHIBIT 17** (Paul Brachvogel Legal Update Memo, pp. 3 & 5).

Recall Petitioners contend that Directors Margel and Clark have not acted upon this violation of labor and employment laws, despite having knowledge of this legal update memo and its contents, either from the District directly by Superintendent Vela or District counsel sharing it with them, or by a matter of Public record through community members sharing it via email with the Board. The act of a non-employee having access, is a breach of security of the District and its systems. The former employee has access to sensitive data of the District while not employed with the District.

### M. School Lunch Debt.

The District had the ability to apply for funding for free lunches District-wide (but did not take the initiative to apply for it or complete the process to obtain), and allowed large amounts of student debt to be incurred by families without informing them.

Recall Petitioner Lori Waight sent several emails to the KSD Board and to the State

Auditor (Kim Nguyen SAO) to advocate for and learn what can be done to resolve the matter of

the District allowing substantial debt to be incurred by families of students within the District. From her perspective, the District and Superintendent Vela only fed the students they were legally required to; they didn't take the effort to feed the students that were possible (at no cost to the students and their families). Ms. Nguyen indicated to Ms. Waight that families of students that have incurred lunch debt "will have to litigate it." *See* **EXHIBIT 20** (April 10, 2024 and June 14, 2024 Lori Waight Emails re Accountability Audit and Lunch Debt).

**Violation:** Per RCW 28A.235.270 states that you need to notify parents within 10 days if they have outstanding lunch debt with the District (by not doing so, the District was in violation of law).

### N. Lack of Respect for Board Members by District Administration.

Watch any YouTube video recording of KSD Board meetings that included discussion of Resolution 1669 at any point in the meeting (between the Resolution's enactment on February 28, 2024 through its suspension on October 9, 2024), and you will find countless examples of disrespect by KSD Administration and District legal counsel for Directors Donald Cook and Andy Song when valid questions were asked (and went unanswered or were shut down by Board President Margel or the hostile majority of the Board).

### Two other examples (obtained through Public Records Requests):

November 30, 2024 Email from then-Board President Joseph Bento to Superintendent Vela and Deputy Assistant Barringer describing his frustrations (Superintendent Vela was side-stepping then-Board President Joe Bento and preferred to instead work with new Board Director Meghin Margel—Director Bento had provided Notice to the Board and District of stepping down from his Board position at this point):

27

From: Bento, Joseph < Joseph.Bento@kent.k12.wa.us>

Sent: Thursday, November 30, 2023 10:59:19 AM

To: Vela, Israel <Israel.Vela@kent.k12.wa.us>; Barringer, Wade <Wade.Barringer@kent.k12.wa.us>

Subject: Frustrated and Upset

Hey All

I left last night not feeling great. I heard some things that didn't sit well with me. I was going to let it go, but when I woke up this morning and saw that I still didn't get paid—I got heated.

That means, I haven't been paid for my time at all this year. It means that I now have to wait until December 31st—this is not ok.

I don't do this for the money, but I'm also not doing this for free. I was kinda hoping that I would have this money for the holidays.

Some people on the board may rely on this stipend to pay for expenses like childcare, etc. In the future, it would be great to remember that.

That's what sent me over.

These were the things that I was annoyed about last night. I was going to just let it go, but not getting paid again really frustrated me.

- It sounds like you all are spending lots of time with new board members. That's fine—but they aren't board members yet. Current board members aren't get paid or getting reimbursed.
- 2. Cancelling the work session. I don't like hearing "we didn't have anything for December." Umm..This current board president has been asking for dress code, library policy, etc to be brought forward for a board policy session. I am still the board president, and we afe?

### Page 2553

- the same board, but we are still the current governing board. I know that you want to wait for the "new board" to start making policy decisions, but this current board can continue to make policies and decisions until we leave.
- The board president and Supt are supposed to be making decisions TOGETHER about the planning of meetings and agenda. I wasn't included in the decision to cancel the Dec 6 meeting.
- 4. While I understand what the Dec 5 meeting is, what exactly are we discussing? I really am wanting to be working until I am done, but what exactly are we planning? It sounds like the Dec 13 meeting is already planned and was discussed with other board members (and not me). So what am I contributing to on the 5<sup>th</sup> if you and other board members have already made plans?

I am really upset. I feel like I am being excluded from things just because I am leaving. Is this how we are treating our staff? If they are on the way out, are we going to exclude them and make them feel like they don't matter? That's how I am feeling.

I don't know what to do next. I don't feel comfortable bringing back any of my materials until I know there is a plan for my pay, my W-2s, etc.

I am feeling very hurt and frustrated.



Joseph R Bento, M. Ed, NBCT He/Him/His (What is this?) School Board Director, District 1| Kent School District C: (253) 561-4295 | Joseph.Bento@kent.k12.wa.us

27

October 10, 2023 Email from Daman Hunter to other KSD Administrators regarding

"Board Members Who Won't Stay in Their Lane," and Dr. Barringer's response:

From: Barringer, Wade < Wade.Barringer@kent.k12.wa.us>

To: Hunter, Daman < Daman.Hunter@kent.k12.wa.us>

Brachvogel, Paul < Paul. Brachvogel@kent.k12.wa.us>

Vela, Israel <Israel.Vela@kent.k12.wa.us>

Date: 10/10/2023 10:19:56 AM Subject: RE: Law Conference...

Bring back all the answers.

EXCELLENCE



#### Wade R. Barringer, PhD (he/him)

Deputy Superintendent | Kent School District Wade.Barringer@kent.k12.wa.us | (253) 204-1253 12033 SE 256<sup>th</sup> Street, Suite A-200 | Kent, WA 98030-6503 www.kent.k12.wa.us | Successfully Preparing All Students For Their Futures











"The single biggest way to impact an organization is to focus on leadership development. There is almost no limit to the potential of an organization that recruits good people, raises them up as leaders and continually develops them." -John Maxwell

From: Hunter, Daman < Daman. Hunter@kent.k12.wa.us>

Sent: Tuesday, October 10, 2023 9:24 AM

To: Brachvogel, Paul <Paul.Brachvogel@kent.k12.wa.us>; Barringer, Wade <Wade.Barringer@kent.k12.wa.us>; Vela, Israel <Israel.Vela@kent.k12.wa.us>

Subject: Law Conference...

Attending a session at the Law Conference titled:

. Dealing With Board Members Who Won't Stay In Their Lane

Interesting strategies/testimonials from a few districts.

"Representation is the lens through which we dream and aspire."

"Leadership is not being in charge, it is about taking care of people in your charge." Simon Sinek



#### Daman Hunter

Associate Superintendent, Human Resources | Kent School District 12033 SE 256<sup>th</sup> Street, A-100 | Kent, WA 98030-6503 O: (253) 373-7223 F: (253) 373-7202 | Daman.Hunter@kent.k12.wa.us

O. Abuse of Authority / Improper Individual Actions—Board President is not allowed to take individual, discretionary action on behalf of the Board, without the explicit and specific delegation of that authority provided by the full Board to her, and Director Clark Did Not Object to Director Margel's Discretionary Acts in the Name of the Board that Occurred without Approval.

By her own admission, Board President Margel individually negotiated Superintendent Vela's contract extension with Superintendent Vela's counsel and external counsel for the District, Curtis Leonard of Pacifica. No Board setting of parameters occurred; no discussion of the application of the Superintendent's evaluation results in regards to the contract terms; the strategy of negotiations were not discussed with the full Board; and there was no reporting back by Margel to the full Board regarding the negotiation terms or offers during the process. *See* BP 1220.

Board President Margel's fellow Board Directors learned of the individual negotiation steps she had taken upon herself to handle in the name of the KSD Board at the September 11, 2024 regular meeting—the day of the KSD Board voted on the Superintendent's contract extension. Director Clark took no action to object to this overstep of authority by the Board President and is complicit in Board President Margel's improper actions.

Board President Margel and Superintendent Vela have a reciprocal interest in each other continuing to be in their respective positions—Margel and Vela are both individually named parties in the Resolution 1669 litigation pending in the Court of Appeals, Division I on behalf of Director Cook. Through information and belief, Board President Margel did not report to the full Board the settlement offer provided by Lara Hruska to P. Stephen DiJulio on August 9, 2024 (despite DiJulio informing Hruska that his clients "were advised"). *See EXHIBIT 15* (email between Hruska and DiJulio).

<sup>80</sup> See YouTube link for September 11, 2024 meeting: https://www.youtube.com/watch?v=CvD-YsK\_Sj4 at the following timestamps (Director Cook brings up Nyland's contract):

<sup>5:38:19</sup> Margel negotiated contract; 5:33:30 Curtis Leonard states president is generally the point person, but then later removes that qualifier and says the Board President is always the point person; 5:44:37 Curtis Leonard later says he decided what to bring to the board "based on our conversations with Margel;" 7:15:18 Cook mentions mentorship; 7:15:56 Margel says she has no idea what he's talking about; 7:16:10 Cook says we paid Nyland \$50,000. See also EXHIBIT 24 (Lori Waight Email re Larry Nyland Contract and Superintendent).

Ms. Margel assumed a negotiating authority that she was not granted—and Director Clark allowed it with no steps taken to correct the Board President's bad acts, which amounts to misfeasance, malfeasance, and a violation of his oath of office and fiduciary duty to the Public.

Per Resolution 1641 (#3), "individual board members do not have independent authority to make board decisions or make individual commitments." Being in the role of Board President does not provide any greater authority to Ms. Margel (as compared to the other Board Members)—she does not (or should not) have the ability to take discretionary action without the agreement and full knowledge and transparency to the rest of the KSD Board.

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
Resolution 1641	REVISED PROTOCOL GUIDELINES
	The Kent School Board will emphasize policymaking, planning, and advocacy for the benefit of children. To support a partnership in responsibility and teamwork, the board and the administration agreed to the following protocol guidelines.
	<ol> <li>The board will consider the district's core values of equity, excellence, and community; research; best practices; and public input, when appropriate, in its decision-making process.</li> <li>The superintendent is the chief executive officer and should recommend, propose, and suggest on operational and community matters before the board.</li> <li>Individual board members do not have independent authority to make board decisions or make individual commitments.</li> <li>Once the board reaches a decision, all board members will support the decision of the majority. Board members may be asked to execute certain documents, such as, but not limited to, resolutions, upon such majority vote. A board member's failure to execute such a document shall not nullify the vote of the board majority nor have other any legal effect.</li> <li>While the board is eager to listen to its constituents and staff, each inquiry is to be referred to the person who can properly and expeditiously address the issue. We agree to follow the chain of command in accordance with established board policy and procedure. Board members will ensure that electronic communications containing information impacting duties of the board will copy Kent Board.</li> <li>The board will encourage stakeholders to present their own issues, problems, or proposals.</li> <li>The board president or designee will be the official spokesperson for the board.</li> </ol>

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Although communications between the central office administrators and the school board are encouraged, board
3		requests are to be directed to the superintendent.
4		<ol><li>The board or its individual members agree to direct all personnel complaints and criticisms directly to the superintendent.</li></ol>
5		10. Board meetings are where the board does its work in public. We agree to speak to the issues on the agenda. Facts and the information needed from the administration will be referred
6		through the superintendent.
7		11. Board meetings are for decision-making, action, and votes.  Board discussions should be concise and pertinent to the issue. If a board member needs more information or has questions, either
8		the superintendent or the board president is to be contacted before the meeting.
9		12. Executive sessions will be held only when specific needs arise.  The board must be sensitive to the legal ramifications of these
10		meetings.  13. We agree to follow the process of adding items to the agenda,
11		instead of bringing it up unexpectedly.
12		<ol> <li>Reports to the board will focus primarily on accountability to the Board and District Goals.</li> </ol>
13		15. Per RCW 28A.343.400 and Policy 1733, board directors will receive compensation for conducting business on behalf of Kent
14		School District. Any director may waive all or any portion of his or her compensation.
15	BP 1002	CODE OF ETHICS AND STANDARDS
16 17		The board of directors, as independently elected officials, recognize and accept the responsibility of the role and personal authority to act only within the school district's structure and the federal and state laws of the
		United States and State of Washington.
18 19		Based on the Washington School Board Standards of Values and Ethical behavior included in the Washington State School Directors' Association publication Washington School Board Standards, board
		members agree to the following guidelines:
20		Standard 1. Values and Ethical Behavior
21		To be effective, an individual school director:
22		a. Places students' needs first.
23		b. Demonstrates commitment to equity and high standards of achievement for each student.
24		c. Commits to treating each individual with dignity and respect.
25		d. Models high ethical standards.
26		e. Advocates for public education. Standard 2. Leadership
		To be effective, an individual school director:
27		10 oc effective, an individual school difector.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		a. Contributes to thoughtful governance discussions and decisions by being well informed, open-minded and deliberative.
3 4		b. Understands that authority rests with the board as a whole and not with individual directors.
5		c. Is able to articulate and model appropriate school director roles and responsibilities.
6		d. Actively participates in school director duties and responsibilities.
7		e. Demonstrates group membership and leadership skills, working within the board structure.
8		f. Respects the board's role in policy making and supports all adopted board policies.
9		Standard 3. Communication
10		To be effective, an individual school director:
11		a. Builds and maintains positive connections with the community and staff.
12		b. Communicates accurately and honestly, with awareness of the impact of his/her words and actions.
13		c. Listens carefully and with an open mind.
14		d. Maintains civility and treats all people with respect.
		e. Maintains confidentiality of appropriate matters.
15		f. Refers and guides people with concerns to appropriate staff.
16		g. Welcomes parent, student and community input.
17		Standard 4. Professional Development
18		To be effective, an individual school director:
19		a. Commits the time and energy necessary to be informed and competent.
20		b. Keeps abreast of current issues, research, applicable laws, regulations, and policies that affect public education.
21		c. Participates in professional development, individually and with the board/ superintendent team.
22		Standard 5. Accountability
23		To be effective, an individual school director:
24		a. Is accountable to the community.
24		b. Takes personal responsibility for his/her own words and actions.
25		c. Respects and abides by board decisions.
26		d. Meets expectations for transparency, including disclosing potential conflicts of interest and refraining from discussing or voting on those issues.
27		issues.

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		e. Complies with board policies/procedures and the law.
3	BP 1220	BOARD OFFICERS AND DUTIES OF BOARD MEMBERS
4		President
5		The president presides at all meetings of the board and signs all papers and documents as required by law or as authorized by action of the board. The president conducts the meetings in the manner prescribed by
6 7		the board's policies. The president has the full right to participate in all aspects of board action without relinquishing the chair, including the right to vote on all matters put to a vote.
8		It is the responsibility of the board president to manage the board's deliberation so that it will be clear, concise, and directed to the issue at
9		hand; to summarize discussion and/or action before moving on to the next agenda item; and to generally manage the meeting so that the agenda is treated in an expeditious manner.
		The president will be the official recipient of correspondence directed to
11		the board and will provide, or cause to be provided to other board members and the superintendent, copies of the correspondence received
12		on behalf of the board.
13 14		The president is authorized to consult with the superintendent on issues such as board meetings, study sessions, and board retreat planning prior to presentation to the full board and perform tasks to facilitate board
15		meetings.  In dealing with the media and the public in general, the president or their
16		designee will serve as the spokesperson of the board. The president is authorized to report and discuss those actions that have been taken and
17		those decisions made by the board as a body. The president will avoid speculating upon actions or decisions that the board may take but has not
18		yet taken.
19		Duties of Individual Board Members
20		The authority of individual board members is limited to participating in
21		actions taken by the board as a whole when legally in session. Board members will not assume responsibilities of administrators or other staff
22		members. The board or staff will not be bound in any way by any action taken or statement made by any individual board member except when
23		such statement or action is pursuant to specific instructions and official action taken by the board.
24		Each board member will review the agenda and any study materials distributed prior to the meeting and be prepared to participate in the discussion and decision-making for each agenda item.
25		Each member is obligated to attend board meetings regularly. Whenever
26		possible, each director will give advance notice to the president or superintendent of their inability to attend a board meeting. A majority of the board may excuse a director's absence from a meeting if requested to
27	L	and come may eneme a director o accorde from a meeting it requested to

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3		do so. The board may declare a board member's position vacant after four consecutive unexcused absences from regular board meetings.
	BP 1410	EXECUTIVE OR CLOSED SESSIONS
4		Executive Sessions
5 6 7		Before convening in executive session, the president will publicly announce the general purpose for excluding the public from the meeting and announce the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the president.
3		An executive session may be conducted for one or more of the following purposes:
		To consider, if in compliance with any required data breach disclosure under RCW 19.255.010 and RCW 42.56.590, and with legal counsel
		available, information regarding the infrastructure and security of computer and telecommunications networks, security and service
		recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other
		information that, if made public, may increase risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets.
		To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.
		To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would
		cause a likelihood of decreased price. However, discussion of the factors comprising the minimum value of the property and the final action of selling or leasing public property will be taken in a meeting open to the
		public.
		To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.
		To receive and evaluate complaints or charges brought against a director
		or staff member; however, upon the request of such director or staff member, a public hearing, or a meeting open to the public will be
		conducted on such complaint or charge.
		To evaluate the qualifications of an applicant for public employment or to review the performance of a staff member; however, discussion of salaries, wages, and other conditions of employment to be generally
		applied within the district will occur in a meeting open to the public, and when the board elects to take the final action of hiring, setting the salary
		of an individual staff member or class of staff members, or discharging or disciplining an employee, that action will be taken in a meeting open
		to the public.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		To evaluate the qualifications of a candidate for appointment to the
3		board; however, any interview of such candidate and final action appointing a candidate to the board will be in a meeting open to the
4		public.  To discuss with legal counsel representing the district matters relating to
5		district enforcement actions, or litigation or potential litigation to which the district, the board, or a member acting in an official capacity is, or is
6		likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the district.
7		Potential litigation means matters protected by attorney-client privilege
8		related to litigation that has been specifically threatened; litigation that the district reasonably believes may be commenced; or the litigation or
9		legal risks of a proposed action or current practice of the district, if public discussion is likely to result in an adverse or financial consequence to the district.
11		The announced purpose of the executive session will be entered into the
12		minutes of the meeting.  Closed Sessions/Private Meetings
		The Open Public Meetings Act (Chapter 42.30 RCW) does not apply to
13 14		certain board activities and public notice is not required prior to holding a closed session for any of the following purposes:
15		Consideration of a quasi-judicial matter between named parties as distinguished from a matter having a general effect on the public or a class or group; or,
16		Collective bargaining sessions with employee organizations or
17		professional negotiations with an employee, including contract negotiations, grievance meetings, and discussions relating to the
18		interpretation or application of a labor agreement, or that portion of a meeting in which the board is planning or adopting the strategy or
19		position to be taken during the course of collective bargaining, professional negotiations, or grievance or mediation proceedings, or
20		reviewing the proposals made in the negotiations or proceedings while in progress.
21	BP 1420	PROPOSED AGENDA AND CONSENT AGENDA
22		The board secretary shall be responsible for preparing the agenda for
23		each meeting, in consultation with the president. As of April 13, 2005, the Kent School District implemented the use of the internet to provide
24		access to school board meeting agendas and supporting documents.  Complete documentation of agenda materials is available from the Kent School District website at: https://www.kent.k12.wa.us/.
25		The agenda is available online at midnight the Friday evening preceding
26		the school board meeting. Individuals without computers are welcome to use any computer in the school district or local library. Printed copies of
27		the agenda will still be available to any interested citizen at the

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		superintendent's office twenty-four (24) hours prior to the meeting.
3		Copies of the proposed agenda, minutes of the previous meeting, and relevant supplementary information will be provided to each board
4		member at least seventy-two (72) hours in advance of the meeting and will be available to any interested citizen at the superintendent's office twenty-four (24) hours prior to the meeting. Provided, however, that this
5		policy shall not be construed to prohibit the board from (1) Amending the regular meeting agenda to consider additional items, which may
6 7		include consideration of supplementary information at any time prior to formal action; nor, (2) Tabling or continuing a matter pursuant to Roberts Rules; nor (3) Suspending notice requirements required herein,
		pursuant to Policy 1320.
8		At a special meeting, final action may be taken only on that business contained in the notice of the special meeting and agenda.
		Consent Agenda
10		To expedite business at a school board meeting, the board approves the
11		use of a consent agenda which includes those items considered to be routine in nature. The consent agenda will appear on the regular agenda.
12		Any item which appears on the consent agenda may be removed on
13 14		request by a member of the board for discussion and subsequent voting. The remaining items may be voted on by a single motion. The approved motion will be recorded in the minutes, including a listing of
14		all items appearing on the consent agenda.
15		Public Comment
16		The board encourages and welcomes public comment from the community. The district will provide a variety of options in which the community may provide public comment to board members.
17		Legal
18		RCW 42.30.080 Special meetings.
19		Cross References
20		1320 - Suspension of a Policy
20		1400 - Meeting Conduct, Order of Business, and Quorum
21		6020 - System of Funds and Accounts
22		6215 - Voucher Certification And Approval
23	BP 1815	ETHICAL CONDUCT FOR SCHOOL DIRECTORS
24		Policy Statement
		Each board director has taken an oath of office to support the Constitutions of the United States and Washington State. The Kent
<ul><li>25</li><li>26</li></ul>		School Board and each of its school directors is committed to upholding the oath of office and to ethical behavior.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Ethical behavior is an individual responsibility. Each school director and the board as a whole will base their conduct on these core ethical
3		principles:
4 5		Objectivity – School directors must place the public's interest before any private interest or outside obligation – choices need to be made on the merits.
6		Selflessness – School directors should not take actions or make decisions in the performance of their position in order to gain financial or other benefits for themselves, their family, or their
7		friends.
8		Stewardship – School directors should conserve public resources and funds against misuse and abuse.
9		Transparency – School directors must practice open and accountable government. They should be as open as possible
10 11		about their decisions and actions, while protecting truly confidential information.
12		Integrity – School directors should not place themselves under any financial or other obligation to outside individuals or organizations that might inappropriately influence them in the performance of their official duties.
13 14		Failure to adhere to these core ethical principles or failure to comply
15		with other policies adopted by the board or the law may result in the board taking formal censure of the offending school director in accordance with Policy 1825 – Addressing School Board Director Violations.
16		In addition to the Policy Statement standards, the board of directors, as
17		independently elected officials, recognize and accept the responsibility of the role and personal authority to act only within the Kent School
18		District's structure. The board commits to taking the time necessary to understand the varied beliefs, acquire the knowledge, and develop the skills necessary to:
19 20		Work with the staff, students, and community to develop an educational system based on local needs, values, and best
21		practices.
		Be a positive advocate of free public education.
22		<ul> <li>Work consistently to help the community understand the importance of public education and the need to support it.</li> </ul>
23 24		<ul> <li>Ensure the community is accurately informed about the Kent School District via regular Kent School District</li> </ul>
25		communications platforms, and that the Kent School District staff understands and values the community perspective regarding education in the Kent School District.
26		<ul> <li>Uphold and enforce all laws, state board rules and regulations,</li> </ul>
27		and legal decisions pertaining to schools.

1 2 3 4	AUTHORITY	CURPORT FOR RECUEDANCE POSTERON ON RECUE
3 4	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
4		<ul> <li>Make decisions in terms of the educational welfare of all children.</li> </ul>
		<ul> <li>Share the responsibility of all board decisions, regardless of individual votes.</li> </ul>
5		Actively support Kent School District and the Kent School District Board.
6		Respect the confidentiality of information that is privileged.
7 8		Recognize that authority rests with the whole board assembled in public meetings; refuse to surrender independent judgment to special interest groups; and make no personal promises nor take
		<ul> <li>any private actions which may compromise the board or district.</li> <li>Recognize that their responsibility is, together with fellow board</li> </ul>
9		members, to see that the schools are well-managed. Board action is confined to policy making, planning, appraisal, and advocacy for the benefit of children.
11		Follow the board protocol guidelines adopted by resolution and amended as necessary.
12		Ethical Conduct for School Directors. Board Directors have a duty of
13		stewardship—to conserve public resources and funds against misuse and abuse. Resolution 1669 is "not legally required" (see Notice of Intent and Purpose
14		See EXHIBIT 3 (Resolution 1669; Notice of Intent and Purpose).
	BP 5050	EMPLOYMENT CONTRACTS
16		When appropriate, the district shall contract annually with district staff members. All employment contracts shall be in conformity with state
17		law, district policies, and negotiated agreements. The contract shall be
18		binding on the district and on the staff member and may not be abridged or abrogated during its term by either party except by mutual consent or
19		as may be provided elsewhere in board policy or in negotiated agreements.
20		The contracts for certificated staff shall be written for a period not to
21		exceed one year. Upon the recommendation of the superintendent contracts for selected classified staff may be in writing and/or for a
22		specific period of time not to exceed one year. Otherwise, the employment of classified staff shall not be for any specified time period.
23		Supplemental contracts, which are not subject to the continuing contract statute, shall be issued for services to be rendered in addition to a staff
24		member's normal full-time assignment.
25		Consultants
26 27		Staff consultant services may be obtained when unique knowledge or technical skills are needed. A description of desired services and an estimate of time and costs shall be submitted to the superintendent or

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		designee for action. Compensation shall be determined by the superintendent or designee, but normally may not exceed that paid to a
3		regular staff member with comparable duties. Any honorarium paid to a consultant shall be determined by the superintendent or designee, taking
4		into account costs incurred and benefits derived there from.  Compensation classification of a consultant on a personal services
5 6		contract shall be determined in compliance with the guidelines of the Internal Revenue Service.
7		
8		[Dr. Nyland does not appear to qualify as a "staff consultant" as the duties required of Dr. Nyland are not similar to that of a "regular staff member" – and Daman Hunter, Associate Superintendent of Human
9		Resources was not able to provide an employment contract for Dr. Nyland. See <u>BP 5050</u> and <u>EXHIBIT 24</u> .]
10	BP <u>6020</u>	SYSTEM OF FUNDS AND ACCOUNTS
11		Funds
12		The district will maintain a system of funds with the county treasurer in accordance with state law and the accounting manual approved by the
13		State Superintendent of Public Instruction. Below is a description of the district's system of funds.
14		General Fund
15		The General Fund (GF) is financed primarily from local taxes, state support funds, <b>federal grants</b> , and local receipts. These revenues are
16		used specifically for financing the ordinary and legally authorized operations of the district for all grades, including programs of instruction
17		for the students, food services, maintenance, data processing, printing, and pupil transportation. The GF is managed in accordance with
18		special regulations, restrictions, and limitations. The GF constitutes an independent fiscal and accounting entity.
19		
20	BP <u>6220</u>	BID OR REQUEST FOR PROPOSAL REQUIREMENTS
		The board recognizes the importance of:
21		<ul> <li>Maximizing the use of district resources.</li> </ul>
22		• The need for sound business practices in spending public money.
23		<ul> <li>The requirement of complying with state and federal laws governing purchasing and public works.</li> </ul>
24		<ul> <li>The importance of standardized purchasing regulations.</li> </ul>
25		<ul> <li>The need for clear documentation.</li> </ul>
26		D. Exemptions
27		D. Exemptions

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		The board may waive bid requirements for purchases:
3		clearly and legitimately limited to a single source of supply.
4		involving special facilities or market conditions.
		• in the event of an emergency.
5		of insurance or bonds.
6		involving public works in the event of an emergency.
7 8		"Emergency" means unforeseen circumstances beyond the district's control that present a real, immediate threat to the proper performance of essential functions or will likely result in material loss or damage to
		property, bodily injury, or loss of life if immediate action is not taken.
9		Whenever the board waives bid requirements, the board will issue a
10		document explaining the factual basis for the exception and record the contract for open public inspection.
11		E. Rejection of Bids
12		The board may, by resolution, reject any and all bids and make further calls for bids in the same manner as the original call.
13		cans for olds in the same manner as the original can.
14		Crimes Against Children
15		The board will include in any contract for services with an entity or
16		<i>individual other than an employee of the district</i> a provision requiring the contractor to prohibit any employee of the contractor from working at a public school who has contact with children at a public school
17		during the course of his or her employment and who has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322.
18		The contract shall also contain a provision that any failure to comply with this section shall be grounds for the district immediately
19		terminating the contract.
20		Women and Minority Owned Businesses
21		The district will ensure that it is providing every opportunity for businesses owned by women or minorities to submit bids on any contract. The district will maintain documentation of efforts to collect
22		bids from women or minority-owned businesses as a part of the bidding
23		process. The district will also ensure that any small works roster or similar list is open and available to participation by women or minority- owned businesses, and that such businesses on its small works roster are
24		treated fairly and equally when requesting bids.
25		II. Procurement Using Federal Funds
26		A. Goods  When the district uses federal funds for presument of toutheeles the
		When the district uses federal funds for procurement of textbooks, the allowable self-certification is \$50,000. When the district uses federal
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		funds for procurement of goods, including furniture, supplies, and equipment:
3		Purchases of \$10,000 or less do not require quotes. However, the district must consider the price to be reasonable based on research, experience,
5		purchase history, or other information and must document this determination. In addition, to the extent practical, purchases must be distributed equitably among suppliers.
6		<ul> <li>Purchases between \$10,000 and \$75,000 must be procured using price or rate quotations from three or more qualified sources.</li> </ul>
7 8		<ul> <li>Purchases of \$75,000 or more must be publicly solicited using its formal bidding procedure.</li> </ul>
9		These processes are not required for those purchases that utilize a board approved Interlocal/Cooperative Agreement per section III.
10		Self-Certification
11		If during a given fiscal year, the district qualifies as a low-risk auditee in accordance with criteria in 2 C.F.R. § 200.520, as determined by the
12		auditor, or has documentation it received a low risk assessment after an annual internal institutional risk assessment to identify, mitigate, and
13		manage financial risks, then the district may use the following Self Certification thresholds instead of the ones described above.
14		Purchases of \$40,000 or less do not require quotes. However, the district must consider the price to be reasonable based on
15 16		research, experience, purchase history or other information and must document this determination. In addition, to the extent practical, purchases must be distributed equitably among
		suppliers.
17 18		<ul> <li>Purchases between \$40,000 and \$75,000 must be procured using price or rate quotations from three or more qualified sources.</li> </ul>
19		<ul> <li>Purchases of \$75,000 or more must be publicly solicited using the district's formal bidding procedure.</li> </ul>
20		If the district uses Self-Certification, the Superintendent will develop Self-Certification procedures to accompany this policy. Additionally, if
21		the district qualifies for Self-Certification and wants to go above the \$40,000 or \$50,000 Self-Certification limits, the district reserves the right to seek approval for higher limits from OSPI.
22		B. Services
23		When the district uses federal funds for procurement of services:
24		<ul> <li>Purchases of \$10,000 or less do not require quotes. However, the district must consider price to be reasonable based on research,</li> </ul>
25		experience, purchase history, or other information and must document this determination. In addition, to the extent practical,
26		purchases should be distributed equitably among suppliers.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3		• Purchases between \$10,000 and \$250,000 must be procured using price or rate quotations from a reasonable number of
4		<ul> <li>qualified sources.</li> <li>Purchases of \$250,000 or more must be publicly solicited using</li> </ul>
5		the district's formal bidding process.
		Self-Certification  If during a given fiscal year, the district qualifies as a low-risk auditee in
6 7		accordance with criteria in 2 C.F.R. § 200.520, as determined by the auditor, or has documentation it received a low risk assessment after an annual internal institutional risk assessment to identify, mitigate, and
8		manage financial risks, then the district may use the following Self-Certification thresholds instead of the ones described above.
9		Purchases of \$50,000 or less do not require quotes. However, the district must consider the price to be reasonable based on research, experience,
10		purchase history, or other information and must document this determination. In addition, to the extent practical, purchases should be
11		distributed equitably among suppliers.
12		Purchases between \$50,000 and \$250,000 must be procured using price or rate quotations from a reasonable number of qualified sources.
13		Purchases of \$250,000 or more must be publicly solicited using sealed bids or requests for proposals.
14 15		If the district uses Self-Certification, the superintendent will develop Self-Certification procedures to accompany this policy. Additionally, if
16		the district qualifies for Self-Certification and wants to go above the \$40,000 or \$50,000 Self-Certification limits, the district reserves the right to seek approval for higher limits from OSPI.
17		Noncompetitive Procurement
18		Noncompetitive procurement may be used only when one of the following five circumstances applies:
19		<ul> <li>Acquiring property or services that do not exceed \$10,000, or in</li> </ul>
20		the case of a school district who qualifies as a low-risk auditee in accordance with criteria in 2 C.F.R. § 200.520 or has
21		documentation of an annual internal institutional risk assessment to identify, mitigate, and manage financial risks, \$40,000.
22		• The item is only available from a single source.
23		<ul> <li>The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.</li> </ul>
24		<ul> <li>The awarding agency (e.g., OSPI) authorizes noncompetitive procurement in response to a written request from the district.</li> </ul>
25		<ul> <li>After solicitation of a number of sources, competition is determined inadequate.</li> </ul>
26		The district must maintain documentation supporting the applicable
27		circumstance for noncompetitive procurement.

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		D. Cost/Price Analysis
3		The district will perform a cost or price analysis in connections with every procurement action in excess of the federal simplified acquisition
4		threshold, currently set at \$250,000 or other limits identified in 48 CFR 2.101, including contract modifications. The method and degree of
5		analysis is dependent on facts surrounding the procurement situation, but should include, as a starting point, independent estimates before receiving bids or proposals.
6 7		In cases where no price competition exists and, in all cases, where the
8		district performs the cost analysis, profit must be negotiated as a separate element in the process. To ensure profit is fair and reasonable, consideration must be given to the complexity of the work performed,
9		the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's past performances, and
10		industry standard profit rates in the surrounding geographical area.  Costs or prices based on estimated costs for contracts are allowed only to
11		the extent that the costs incurred or cost estimates would be allowable under 2 CFR 200.400476.
12		E. Suspension and Debarment
13 14		Before entering into federally funded vendor contracts for goods and services that equal or exceed \$25,000 and any subcontract award, the district will ensure the vendor is not suspended or debarred from
1.5		participating in federal assistance programs.
15		F. Conflict of Interest
16		No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if he or she has a real or apparent conflict of interest. Such a conflict would arise
17 18		when the employee, officer, or agent, any member of their immediate family, their partner, or an organization that employs or is about to
19		employ any of the parties indicated herein has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
20		No employee, officer, or agent of the district may solicit or accept gratuities, favors, or anything of monetary value from contractors or
21		parties to subcontracts. Violation of these standards may result in disciplinary action including, but not limited to, suspension, dismissal,
22		or removal.
23		G. Interlocal Cooperation
24		The board reserves the right to enter into interlocal cooperative agreements for purchases with other governmental agencies, or groups of governmental agencies, pursuant to 2 CFR 200.318(e) and the
25		Interlocal Cooperation Act, Chapter 39.34 RCW. Prior to making any
26		purchases through agreements entered into in this manner, the district will confirm the other governmental agency has followed its purchasing procedures, and shall maintain that documentation for the duration of the
27		contract. The board must have entered into these agreements prior to

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
3		making any purchase arrangements utilizing the contracted terms. Use of cooperative agreements for public works contracts does not relieve the board of other obligations under public works contract requirements, such as retainage, prevailing wage, etc.
4		H. Women and Minority-Owned Businesses
5		The district will ensure that it is providing every opportunity for businesses owned by women or minorities to submit bids on any
6		contract. The district will maintain documentation of efforts to collect bids from women or minority-owned businesses as a part of the bidding
7 8		process. The district will also ensure that any small works roster or similar list is open and available to participation by women or minority-owned businesses, and that such businesses on its small works roster are
9		treated fairly and equally when requesting bids. The district will also include language requiring any prime contractor that employs
10		subcontractors to show proof that it provides equal opportunity for bidding to women or minority-owned businesses.
11		Federal Agency or Pass-Through Entity Review
12 13		I. The district will maintain records of all purchases made using Federal funds and shall provide any and all documentation to the Federal awarding agency or the state pass-through entity for compliance with all rules and regulations.
14		III. Procedures
15		The superintendent or designee will establish bidding and contract awarding procedures consistent with state and federal law.
16	BP 6220P	BID OR REQUEST FOR PROPOSAL REQUIREMENTS
17		The following procedures will be in effect for purchasing and public works through the bidding or request for proposal process.
18		1. The district will prepare clear and definite plans or specifications
19		for the goods or services to be purchased.  2. The district will provide notice of the call for formal bids by
20		publication in at least one local newspaper of general circulation in the district once a week for two consecutive weeks.
21		The notice will direct potential bidders to full bid requirements.
22		The notice will provide notice of how sealed bids are to be received.
23		The notice will also include information about the date, time, and place where bids will be opened.
24		3. The district will publicly open and read formal bids on the date, time, and place named in the notice and then will file the bids for
25		public inspection. Any interested member of the public may attend the bid opening. It will be the bidder's sole responsibility
26		to see that the district receives his/her bid prior to the time set for opening of bids. The district will return any bid received after the time set for opening the bids to the bidder unopened and without
27		time set for opening the olds to the oldder thiopened and without

1	AUTHORITY OR	SUPPORT FOR PETITIONERS' POSITION ON RECALL
	EXHIBIT	
2		consideration. The district will accept proposals in the place named and no later than the date and time named in the notice.
3		<ul><li>4. Formal bid or proposal tabulations may be presented at a meeting of the board for study purposes.</li></ul>
4		5. The board will award the formal contract based on staff recommendations.
5		Specifications using brand names and manufacturers' catalog
6		numbers are for identifying and establishing a quality standard.  The board may consider bids or proposals on equal items, providing the bidder or proposer specifies brand and model and
7		furnishes descriptive literature. The board will condition its acceptance of alternative "equal" items upon its inspection and
8		testing after receipt. If the board does not find the items to be equal, the board will return the items at the seller's expense and
9		cancel the contract.
10		7. The district will reserve the right to reject any or all bids or proposals, waive any formalities, and/or irregularities, and cancel
11		the solicitation, if a reason exists.  8. On construction projects, the bidder will provide contractor
12		assurances complying with prevailing wage and affirmative action requirements as well as provide payment and performance
13		bonds.  9. The superintendent or designee may solicit bids or proposals by
14		telephone and/or written quotation for purchases of furniture, equipment, and supplies that have an estimated cost in excess of
15		\$40,000 up to \$75,000. At least three telephone or written quotations will be secured prior to the date established by the
16		superintendent or designee. All telephone quotations must be confirmed promptly in writing to constitute a valid quotation.
17		10. For public works projects estimated to cost \$350,000 or less per RCW 39.04.155, the superintendent or designee may solicit bids
18		by telephone, electronic, or written quotations from contractors on the appropriate small works roster. The district will not break
19		a project into units or phases to come within the scope of the small works roster process or limited public works process.
20		
21		All contracts will provide that, if the district files suit to enforce the terms of the contract, the venue will be King County. All contracts will
22		also provide that if the district is successful in the suit, the court may order reimbursement of the district's attorney fees and court costs, as the
23		court deems reasonable. Any contract for services with an entity or individual other than an employee of the district shall include a
24		provision requiring the contractor to prohibit any of its employees who has pled guilty to or been convicted of any felony crime specified under
25		RCW <u>28A.400.322</u> and who would have contact with children at a
26		public school during his or her employment from working at a public school. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the district to immediately
		terminate the contract.
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		
3		The following will be in effect for purchasing and public works awards:
4		A. The contract for the work or purchase shall be awarded to the lowest responsible bidder as described in RCW 39.26.160(2), but the board may by resolution reject any and all bids and make further calls for bids in the
5		same manner as the original call. In determining whether the bidder is a responsible bidder under RCW 39.26.160(2), the district must consider
		the following elements:  1. The ability, capacity, and skill of the bidder to perform the
7 8		contract or provide the service required.  2. The character, integrity, reputation, judgment, experience, and
9		efficiency of the bidder.  3. Whether the bidder can perform the contract within the time
10		specified.  4. The quality of performance of previous contracts or services.  5. The previous and existing compliance by the hidden with laws.
11		<ul><li>5. The previous and existing compliance by the bidder with laws relating to the contract or services.</li><li>6. Whether, within the three-year period immediately preceding the</li></ul>
12		date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the
13		department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have
14		willfully violated any provision of Chapter 49.46, 49.48, or 49.52 RCW, as defined in RCW 49.48.082. Before awarded a contract,
15		a bidder shall submit to the district a signed statement in accordance with RCW 9A.72.085, verifying under penalty of
16		perjury that the bidder is in compliance with the responsible bidder criteria requirement of this subsection of RCW.
17		<ol><li>The district may secure such other information as may have bearing on the decision to award the contract.</li></ol>
18		In addition to the bidder responsibility criteria, the district may adopt relevant supplemental criteria in accordance with RCW 39.04.350(3) for
19		determining bidder responsibility, applicable to a particular project with which the bidder must meet.
20		Formal written contracts will be prepared for all major construction and repair projects. The board will discuss and make a motion to approve the
21		award of contract and record the results of the vote in the board minutes.  The Superintendent or designee will sign the contract once it has been
22		approved by the board.
23		All contracts will provide that, if the district files suit to enforce the terms of the contract, the venue will be King County. All contracts will
24		also provide that if the district is successful in the suit, the court may order reimbursement of the district's attorney fees and court costs, as the
25		court deems reasonable. Any contract for services with an entity or individual other than an employee of the district shall include a
<ul><li>26</li><li>27</li></ul>		provision requiring the contractor to prohibit any of its employees who has pled guilty to or been convicted of any felony crime specified under
21		RCW 28A.400.322 and who would have contact with children at a

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		public school during his or her employment from working at a public
3		school. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the district to immediately terminate the contract.
4		When purchases are made with federal funds, the district will follow
5		these additional guidelines and procedures.
6		1. The district will, to the greatest extent practicable, ensure that goods, products, or materials are produced in the United States (2 CFR 200.322).
7 8		2. When bids or competitive solicitation is required, the district will ensure that the requirements are not written in such a way as to prevent competition, such as specifying a name brand of item (2
9		CFR 200.319).
10		3. The district will ensure that there are enough qualified sources to ensure maximum open and free competition, and that potential bidders are not unjustly precluded from bidding (2 CFR)
11		<u>200.319</u> ).
12		4. All contracts shall include the following provisions in the contract language, as applicable (2 CFR Appendix II to Part 200):
13		A. It must address remedies for instances where a contractor
14		violates the terms of the contract.
15		B. If in excess of \$10,000, it must include language addressing termination for cause.
16		C. It must include an Equal Employment Opportunity clause.
17		D. If the contract is for a public work project, language that the Davis-Bacon Act will be followed.
18		E. That the contractor, and any subcontractors, are not suspended or debarred from receiving Federal funding.
19		
20	BP <u>6230</u>	PURCHASING AND CONTRACTING: RELATIONS WITH
21		VENDORS
22		Financial and business transactions of the District will be carried out in conformity with the law and consistent with sound and ethical business
23		practices. Purchasing and contracting decisions will be made on the basis of objectivity and will not be influenced by friendships or other
24		personal relationships.
25		GIFT RULE
26		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2 3		Neither board members, administrators, nor staff will solicit or accept a gift or favor from vendors, prospective vendors, other firms, or individuals who have had or hope to have transactions with the district.
4		Definition of "Vendor"
5		A "vendor" is a person (or an organization made up of such persons) who:
6		
7 8		<ul> <li>is seeking official action by, is doing business or seeking to do business with, or is regulated by the employee's agency; or</li> <li>has interests that may be substantially affected by performance or nonperformance of the employee's official duties.</li> </ul>
9		Definition of "Gift"
10		A "gift" is defined to mean anything of monetary value, and specifically
11		includes transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or
12		reimbursement after the expense has been incurred.
13		Exclusions from the Gift Rule
14		<ul> <li>modest refreshments (such as coffee and donuts);</li> <li>unsolicited flowers, plants, and floral arrangements;</li> </ul>
15		<ul> <li>unsolicited advertising or promotional items of nominal value, such as pens and note pads;</li> </ul>
<ul><li>16</li><li>17</li></ul>		<ul> <li>unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;</li> </ul>
18		informational material, publications, or subscriptions related to the recipient's professional duties;      food and howevers consumed at hosted recentions where
19		<ul> <li>food and beverages consumed at hosted receptions where attendance is related to the employee's official duties;</li> <li>admission to, and the cost of food and beverages consumed at,</li> </ul>
20		events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
21		discounts available to the public or to all government employees; and
22		<ul> <li>rewards or prizes connected to competitions open to the general public.</li> </ul>
23		Exceptions to Gift Rule
24		a gift valued at \$50 or less, provided that the total value of gifts
<ul><li>25</li><li>26</li></ul>		from the same person is not more than \$50 in a calendar year;  a gift motivated solely by a family relationship or personal friendship; or

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		<ul> <li>gifts of free attendance at certain widely attended gatherings, provided that the agency has determined that attendance is in the interest of the agency.</li> </ul>
4		Board members, administrators, and staff are prohibited from financial
5		interests in any district purchase, sale, or other transaction. The District will not purchase goods or services from any member of the board or management employee or from the spouse or dependent relative of any
6 7		such person, or from any business or firm in which any such person will receive financial benefit in excess of the gift rule above.
8		The District may purchase goods or services from an employee of the district other than identified above only when the interest of the employee in the transaction is fully disclosed and only upon an
9		affirmative demonstration that any such employee has not used his or her position in the district to influence the decision to make such purchase.
11 12	Robert's Rules of Procedure	Failure to follow meeting procedures.
	RCW 28A.150.230	DISTRICT SCHOOL DIRECTORS' RESPONSIBILITIES
13 14		(1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through
15		its respective administrative staff, be held accountable for the proper operation of their district to the local community and its electorate.
16		In accordance with the provisions of this title, as now or hereafter amended, each common school district board of directors shall be vested with the final responsibility for the setting of policies ensuring quality in
17 18		the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.
19		(2) In conformance with the provisions of this title, as now or hereafter amended, it shall be the responsibility of each common school district
20		board of directors to adopt policies to:
21		(a) Establish performance criteria and an evaluation process for its superintendent, classified staff, certificated personnel, including
22		administrative staff, and for all programs constituting a part of such district's curriculum. Each district shall report annually to the
23		superintendent of public instruction the following for each employee group listed in this subsection (2)(a): (i) Evaluation criteria and rubrics; (ii) a description of each rating; and (iii) the number of staff in each
24		rating;
25		(b) Determine the final assignment of staff, certificated or classified, according to board enumerated classroom and program needs and data, based upon a plan to ensure that the assignment policy: (i) Supports the
<ul><li>26</li><li>27</li></ul>		learning needs of all the students in the district; and (ii) gives specific attention to high-need schools and classrooms;

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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		(c) Provide information to the local community and its electorate
3		describing the school district's policies concerning hiring, assigning, terminating, and evaluating staff, including the criteria for evaluating
4		teachers and principals;
5		(d) Determine the amount of instructional hours necessary for any student to acquire a quality education in such district, in not less than an amount otherwise required in RCW 28A.150.220, or rules of the state board of education;
7		(e) Determine the allocation of staff time, whether certificated or classified;
8		(f) Establish final curriculum standards consistent with law and rules of the superintendent of public instruction, relevant to the particular needs
9		of district students or the unusual characteristics of the district, and ensuring a quality education for each student in the district; and
10		(g) Evaluate teaching materials, including text books, teaching aids, handouts, or other printed material, upon complaint by parents,
11 12		guardians[,] or custodians of students who consider dissemination of such material to students objectionable in accordance with RCW 28A.320.235 and 28A.320.230.
13	RCW 28A.320.100	ACTIONS AGAINST OFFICERS, EMPLOYEES OR AGENTS OF SCHOOL DISTRICTS AND EDUCATIONAL SERVICE
14		DISTRICTS—Defense, costs, fees—Payment of obligation.
15		Whenever any action, claim or proceeding is instituted against any director, officer, employee or agent of a school district or educational service district arising out of the performance or failure of performance
16 17		of duties for, or employment with any such district, the board of directors of the school district or educational service district board, as
18		the case may be, may grant a request by such person that the prosecuting attorney and/or attorney of the district's choosing be authorized to
19		defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the school district's general fund, or in the case of an
20		educational service district, from any appropriation made for the support of the educational service district, to which said person is attached:
21		PROVIDED, That costs of defense and/or judgment against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scene of his or her
22		was not acting in good faith or within the scope of his or her employment with or duties for the district.
23   24		The individual actions of Board President Margel in negotiating, making discretionary decisions about the negotiations (taking action on behalf of the Board without authority of the Board) has put the District and its
25		the Board without authority of the Board) has put the District and its Board at risk—including financially, if the individual acts are found to be violations of oath of office, or misfeasance/malfeasance—if the
26		contract results in litigation.
27	RCW 28A.330.030	DUTIES OF PRESIDENT

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe.
	RCW 28A.330.100	ADDITIONAL POWERS OF BOARD
5		"Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:
6 7		(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her, and to fix his or her duties and compensation;
8		(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation;
9		(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe
11		their duties and fix their compensation;"
12	RCW 28A.400.315	EMPLOYMENT CONTRACTS
13 14		Employment contracts entered into between an employer and a superintendent, or administrator as defined in RCW 28A.405.230, under RCW 28A.400.010, 28A.400.300, or 28A.405.210:
15 16		(1) Shall end no later than June 30th of the calendar year that the contract expires except that, a contract entered into after June 30th of a given year may expire during that same calendar year; and
17		(2) Shall not be revised or entered into retroactively.
18	RCW 39.26.140	SOLE SOURCE CONTRACTS
19		(1) Agencies must submit sole source contracts to the department and make the contracts available for public inspection not fewer than 15
20		working days before the proposed starting date of the contract. Agencies must provide documented justification for sole source contracts to the department when the contract is submitted, and must include evidence
21		that the agency posted the contract opportunity at a minimum on the state's enterprise vendor registration and bid notification system.
22		(2) The department must approve sole source contracts before any such
23		contract becomes binding and before any services may be performed or goods provided under the contract. These requirements shall also apply to all sole source contracts except as otherwise exempted by the director.
<ul><li>24</li><li>25</li></ul>		(3) The director may provide an agency an exemption from the requirements of this section for a contract or contracts. Requests for exemptions must be submitted to the director in writing.
26		(4) Contracts awarded by institutions of higher education from nonstate
27		funds are exempt from the requirements of this section.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	RCW 40.14.026	"(5) To improve best practices for dissemination of public records, each
3		agency with actual staff and legal costs associated with fulfilling public records requests of at least one hundred thousand dollars during the prior
5		fiscal year must, and each agency with such estimated costs of less than one hundred thousand dollars during the prior fiscal year may, report to
6		the joint legislative audit and review ["JLARC"] committee by July 1st of each subsequent year the following metrics, measured over the
7		preceding year:
8		(a) The number of requests where the agency provided the requested records within five days of receiving the request.
9		(b) The number of requests where the agency provided a time estimate for providing responsive records beyond five days after receiving the request.
10 11		(c) The average and median number of days from receipt of request to the date the request is closed.
12		(d) The number of requests where the agency formally sought additional clarification from the requestor;
13		(e) The number of requests denied in full or in part and the most common reasons for denying requests;
14		(f) The number of requests abandoned by requestors;
15 16		(g) To the extent the information is known by the agency, requests by type of requestor, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requestors, current or former employees, and others;
17		(h) Which portion of requests were fulfilled electronically compared to requests fulfilled by physical records;
18		(i) The number of requests where the agency scanned physical records electronically to fulfill disclosure;
19 20		(j) The total estimated agency staff time spent on each individual request;
		(k) The estimated costs incurred by the agency in fulfilling records
21		requests, including costs for staff compensation and legal review, and a measure of the average cost per request;
22		(l) The number of claims filed alleging a violation of chapter 42.56 RCW or other public records statutes in the past year involving the
24		agency, categorized by type and exemption at issue, if applicable;
25		(m) The costs incurred by the agency litigating claims alleging a violation of chapter 42.56 RCW or other public records statutes in the past year, including any penalties imposed on the agency;
26		(n) The costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment,
27		received, mentioning start compensation and parentages of equipment,

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2	EAHIDH	hardware, software, and services to manage and retain public records;
3		and
4		(o) Expenses recovered by the agency from requestors for fulfilling public records requests, including any customized service charges.
5	RCW 42.20.100	FAILURE OF A DUTY BY PUBLIC OFFICER; WILLFUL NEGLECT
6		Board President Margel acting on her own behalf; negotiating without
7		reporting back to all Board Members, and without input or parameters set in advance of negotiation - she doesn't have the authority to do that, or to take "action" on her own. [Director Clark failed to take action on
8		Margel's overstep of authority and discretionary acts without approval of the Board.]
9		Negotiated Superintendent contract extension on her own (individual
10		action of a Board member)—and failure of a duty to report back to full Board; Negotiated without seeking approval of parameters set by the full
11		Board
12		Resolution 1669 litigation—individual action by receiving legal guidance on behalf of and in the name of the Board, strategizing and
13		discussion of settlement negotiations with counsel and not reporting back to the full Board; parameters of the individual action not set or approved by the Board; Conflict of interest as named party in litigation.
14		Legal update memo – "at direction of Board president and
15		Superintendent Vela"
16		Agenda; notice; had the ability to delay to look into conflicts with unions, ask questions, get more information, to provide full transparency to public—failure of a duty to the Public.
17	RCW 42.30.110	EXECUTIVE SESSIONS
18	RCW 42.30.110(2)	Violation of RCW 42.30.110: Board President Margel is responsible for
19		the order of meetings on behalf of the KSD Board, including compliance with the Open Public Meetings Act. Improperly noticed and attended
20		meetings, including on May 15, 2024—Executive Sessions with a consultant regarding Superintendent Vela's evaluation
21 22		Director Clark attended and participated in improper executive sessions of the Board.
23	RCW 42.30.120	Personal liability.
24	RCW 42.30.020(2)	Subject to OPMA as governing body of Public agency.
25	Chapter 42.56 RCW	PUBLIC RECORDS ACT
26 27	Joseph Riley and Allison Riley v. Kent School District	KCSC Case No. 24-2-07670-6 KNT
~ '		

84 See https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C7S5NX10F1C6.

under the heading of "supports geared towards specific groups (ex. refugees)," the sources of funding (including federal funds), and a description of services.

The following screenshots are from the October 27, 2021 presentation to the Board regarding Living Well Kent's services and mission:





Living Well Kent is actively involved in refugee student(s) progress, with programming designed to prioritize and provide academic and social-emotional support.





Trusted Afghani and East African Community Navigators introduce services to youth under refugee status within the Kent School District. LWK has frequent communication with students to determine needs, and update families about programming and their student's progress.<sup>85</sup>

Later, in that same meeting, the KSD Board voted on a motion for the funding of "School's Out Washington Refugee School Impact Grant Award to Kent School District," which passed.<sup>86</sup>

<sup>&</sup>lt;sup>85</sup> It is unknown if Awale Farah is the "math tutor" listed on this slide.

<sup>&</sup>lt;sup>86</sup> See October 27, 2021 agenda at https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=C7WKVZ528247.

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## C. Just a Few Weeks After the October 27, 2021 Meeting (and the first Living Well Contract with the KSD), Director Farah was Elected to the KSD Board.

After the November 2021 election results were certified by King County Elections, Awale Farah became a member of the KSD Board. He was sworn in on December 8, 2021 at a regular meeting of the Board, along with Tim Clark.

#### D. <u>March 9, 2022 Meeting</u>—New Contract for Additional Funding for Living Well Kent Presented to the Board.

Several months later, at a regular meeting of the KSD Board on March 9, 2022, <sup>87</sup> the Board, including Director Farah, voted on a contract <sup>88</sup> to approve an additional \$287,000 for Living Well Kent and other community-based organizations. Director Farah did not disclose to the Public (or to his fellow Board members) about his known marital conflict of interest in the contract Living Well Contract prior to the vote. He also failed to recuse himself from voting on a contract in which he was beneficially interested through his marital community.

Did Director Farah influence, or attempt to influence, his fellow Board members and the Public on the vote of the contract by not disclosing his spousal conflict of interest between Living Well Kent and the Kent School District before the vote? Director Farah had a duty to disclose his interest and to recuse himself from the vote on the contract. *See* RCW 42.23.040. The failure of a duty of a Public officer is a misdemeanor. RCW 42.20.100.

After the March 29 meeting (and after learning of the beneficial conflict of interest of Director Farah regarding Living Well Kent), former Board Director Michele Bettinger became very concerned and investigated further by sending emails, submitting public records requests, and eventually a submitting a PDC complaint regarding Director Farah and his beneficial conflict of interest regarding a contracting party of the KSD as a sitting Board Director.<sup>89 90</sup>

<sup>&</sup>lt;sup>87</sup> See March 9, 2022 YouTube Link at https://www.youtube.com/watch?v=Jsz7WnHBN1w and the Agenda for the meeting is at: https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CBQ4CE0ABACE.

<sup>&</sup>lt;sup>88</sup> See contract for "School's Out Washington Refugee School Impact Grant Additional Award to Kent School District" (re Living Well Kent) on the March 9, 2022 Agenda at: https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CBQ4CE0ABACE.

<sup>&</sup>lt;sup>19</sup> See <u>EXHIBIT 1</u> (PDC Complaint Against Awale Farah; Michele Bettinger Emails and Records Requests re Living Well Kent).

<sup>&</sup>lt;sup>90</sup> Ms. Bettinger voted to approve the March 9 LWK contract when the conflict with Director Farah was not publicly known and not disclosed to her—but she had stepped down from her Board position the day prior to the June 22, 2022 regular meeting so did not vote on the contract's ratification.

1	E. <u>June 29, 2022 Meeting</u> —Re-Vote and Ratification of Living Well Kent		
2	Contract.		
3	At the June 29, 2022 regular meeting of the Board, 91 then-Board President Leslie		
4	Hamada introduced the agenda item "Ratification of School's Out Washington Refugee School		
5	Impact Grant Award to Kent School District; and, Authorization of Staff to Enter Into		
6	Arrangements with Community Based Organizations," Director Farah leaves the room, and then-		
7	General Counsel Paul Brachvogel discusses the reason for the matter coming before the Board a		
8	second time.		
9	Motion by Tim Clark, second by Joseph Bento.		
10	Final Resolution: Motion Carries Yea: Leslie Hamada, Tim Clark		
11	Abstain: Joseph Bento Not Present at Vote: Awale Farah		
12	Motion by Tim Clark, second by Joseph Bento.		
13			
14	Mr. Brachvogel allowed the re-vote on and ratification of the March 9, 2022 Living Well		
15	Kent CBO contract (despite current law, as well as case law, stating that a contract in which a		
16	Board Member is beneficially interested, either directly or indirectly, is void). City of Northport		
17	v. Northport Town Site Co., 27 Wash. 543 (1902); RCW <u>42.20.100</u> , <u>42.23.050</u> . See also <u>AGO</u>		
18	<u>1954 No. 317</u> .		
19	The recommendation listed on the June 29, 2022 agenda item for approval of the re-vote		
20	and ratification of the March 9, 2022 contract states:		
21	"That the Board ratify the March 9, 2022 authorization of the contract in order to remove		
22	any ambiguity concerning that vote; and, to avoid risk that the March 9, 2022 was void <i>ab initio</i> . Staff recommends that a board member with an interest, either remote or		
23	direct, (1) disclose the nature of the such interest; and, then, (2) announce his or her recusal from the vote, (3) leave the dais and board room during the motion, discussion		
24	and vote of that item."		
25			
26	91 See June 29, 2022 YouTube Link at 25:09: https://www.youtube.com/watch?v=MkFff01BQNI.		
27	Meeting Agenda: https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CFPJ9N4C1EB8; and Minutes: https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/CJTR2M6BE368/\$file/Board%20Special%20Meeting%20Minutes%20062922.pdf.		

PETITION FOR THE RECALL OF A BOARD DIRECTOR

OF KENT SCHOOL DISTRICT NO. 415 - 162

RECALL PETITIONERS

GRETA NELSON MICHELE BETTINGER LORI WAIGHT

The fact that the interested public officer does not participate in any official action on the contract is also immaterial; the existence of the interest, rather than participation or its absence, is controlling as to the validity of the contract. *See* AGO 53-55 No. 317. A contract where a Board member has an interest in the ownership of a corporation is invalid. *Id*.

Several months later, on June 29, 2022, the Board conducted a re-vote and ratification of the March 9 contract after the spousal conflict of interest in contract came to light. Director Farah recused himself from voting for the ratification, and the contract was approved (again)—with legal guidance provided at the meeting by the KSD's then-General Counsel Paul Brachvogel.

At the June 29 meeting, the District (through Mr. Brachvogel) described Ms. Isaak as a salaried "employee" (which is not true—Ms. Isaak is salaried "officer" of Living Well Kent, and only non-salaried officers would have an exception that applies regarding beneficial conflicts of interest). Mr. Brachvogel further described Director Farah's interest as a "remote interest" in contract, but that does not appear to be the case. See AGO 53-55 No. 317 ("... but courts find the requisite interest where the officer owns shares in the corporation" [regarding City of Northport, coincidentally cited within Resolution 1669]). Emphasis added.

A spousal interest in ownership of a corporation is a beneficial conflict of interest in contract and not a remote interest at all. A vote on a contract *without the disclosure of the conflict* is a failure of a duty of a public officer—which is a misdemeanor in Washington State. *See* RCW 42.20.100.

Contrary to Mr. Brachvogel's statement to the KSD Board and Public that "the Board Director's spouse is a salaried employee of the CBO"—Director Farah's spouse is actually a salaried officer of the Living Well Kent's Board, in addition to being its Founder and Executive Director—which means Director Farah does not have a remote conflict of interest and in fact he actually has a beneficial conflict of interest in contract. Director Farah's sole source of income, other than his Board position stipend, is his spouse's income. The "remote interest" exception in Washington law only applies to non-salaried officers of the Board or

employees that are paid entirely by fixed wages or salary, or a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party. *See Exhibit 29* (Living Well Kent's Current Leadership and Officers of the Board).

Recall Petitioners contend that Director Farah has more than a one percent interest in Living Well Kent through his marital community, given his spouse's status as founder, salaried officer, and current Executive Director.

"A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract. RCW 42.23.040. Emphasis added.

Both direct and indirect financial interests are prohibited and the law also prohibits an officer from receiving financial benefits from anyone else having a contract with the municipality.

F. <u>December 14, 2022 Meeting</u>: Tim Clark Becomes Board President; Director Farah's Recusal from Vote on Contract; Directors Clark and Margel Vote to Approve Contract; Director Farah's Outburst During Board Report.

At the December 14, 2022 regular meeting of the Board—the leadership was reorganized and Tim Clark was voted in as Board President<sup>92</sup>, with Director Farah voted in as Vice President. Then-Board President Tim Clark presided over the remainder of the December 14

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<sup>&</sup>lt;sup>92</sup> In March of 2023, Tim Clark stepped down as Board President after he made an insensitive comment. *See* Seattle Times article at: <a href="https://www.seattletimes.com/seattle-news/kent-school-board-president-resigns-after-insensitive-comment/">https://www.seattletimes.com/seattle-news/kent-school-board-president-resigns-after-insensitive-comment/</a> ("...in referencing a group of Somali families living in an unspecified housing project, he used the phrase "a colony of Somalis.").

meeting after the Board's leadership re-organization. Later in the meeting, a third contract (in which Living Well Kent was a partial recipient) was brought before the KSD Board for review and approval. 93 Director Farah recused himself from the agenda item. Later in the meeting during his board report, Director Farah had an outburst and declared that being required to recuse himself from vote on the Living Well Kent contract was a personal attack—giving the impression that he does not actually understand the duties, responsibilities, and ethical requirements of public officials, despite having received various training and legal guidance in the past regarding conflicts of interest and the requirements to disclose them, and in particular those in which he is beneficially interested.

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Agenda Item Details

Meeting Dec 14, 2022 - Regular Meeting - 6:30 p.m.

Category Reorganization of the Board of Directors and Election of Officers

Subject Reorganization of the Board of Directors and Election of Officers

Type Action

Goals 3d Organizational Effectiveness

Kent School District
Kent, Washington

December 14, 2022

Reorganization of the Board of Directors and Election of Officers

AGENDA ITEM:

ACCORDING to Board Policy 12:10, at the regularly scheduled board meeting in December, the directors will elect from among the members a president, a vice president and a legislative representative to serve one-year terms for the period from January 1:0 December 31. If a Board officer is unable to continue to serve as an office, a replacement will be elected immediately.

Each board of directors of every districts shall also be cognized at the first meeting held after one or more newly deceded directors and effice.

An oral roll call vice of all the members of the Board is required for the election of board officers and a majority vote of all the members of the Board is required for any person to be elected or selected for such positions.

The superintendent will serve as secretary to the Board.

Motion & Voting

Director Awale Farsh mominated Director Tim Clark for Board President. Yea Votes: Directors Tim Clark, Awale Farsh, Leslie Hamada, Meghin Margel, Abstentions: Joseph Bento Director Marke Farsh for Board Vice President. Tim Clark, Awale Farsh, Leslie Hamada, Meghin Margel, Abstentions: Joseph Bento Director Marke Farsh for Board Vice President. Tim Clark, Vice President. Tim Clark Representative. Vea Votes: Directors Tim Clark, Awale Farsh, Leslie Hamada, Meghin Margel, Abstentions: Joseph Bento Director Marke Farsh for Board Legislative Representative: Leslie Hamada

Legislative Representative: Leslie Hamada
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## G. Known Beneficial Conflict of Interest in Contract Between Sitting Board Director and Contracting Party of the KSD (Living Well Kent).

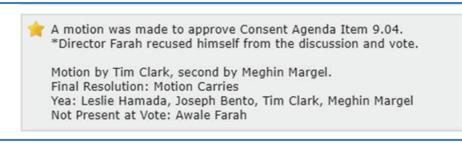
As a result of the restructuring of the KSD Board during the December 14, 2022 regular meeting, Director Tim Clark was voted in as President of the Board. Director Clark presided over the vote of a contract involving a known conflict of interest of a fellow Board Director (Awale Farah). Then-Board President Clark made a motion to approve item 9.04 (Office of

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<sup>&</sup>lt;sup>93</sup> See YouTube link of December 14, 2022 meeting at https://www.youtube.com/watch?v=vorCNC2I3E8 at timestamp **3:45:00** (consent agenda begins); Director Farah pulls consent agenda item 9.04 at **4:14:55**; Director Farah recuses himself at **4:31:38 – 4:40:15**; Director Farah has an outburst during his Board Report at **4:34:47**.

Refugee and Immigrant Support Assistance Grant Application), which was seconded by Director Margel; Director Farah recused himself during the discussion and vote on the agenda item.<sup>94</sup>

Then-Board President Clark and Director Margel voted to approve a contract with Living Well Kent on December 14, 2022, despite the known beneficial interest in Living Well Kent of their fellow Board Director, Awale Farah. *The vote to approve an improper contract was a failure of a fiduciary duty to the Public.* 95



#### H. Financial Disclosure; Removal of Spousal Interest.

Director Farah knowingly removed his spouse from his F-1 report, after conflicts of interest were revealed in Board meetings in June and December of 2022. Recall Petitioner Michele Bettinger filed a citizen complaint with the PDC that resulted in a finding that Director Farah had violated the law—he was required to revise his F-1 report and also received a warning from the PDC. See **EXHIBIT 1** (PDC Complaint Against Awale Farah).

# I. Director Clark's Admission of Prior Knowledge of Director Farah's Conflict of Interest Regarding Living Well Kent; Failure of a Duty to Act.

Director Clark voted "yea" in a 2/1 vote on June 29, 2022, during the re-vote and ratification of the March 9, 2022 contract for the distribution of funds to Living Well Kent, and made comments revealing that he had known of the association between Director Farah and Living Well Kent's Executive Director, Shamso Isaak, and therefore had prior knowledge of Director Farah's conflict of interest in the contract (before the March 9 vote and the June 29 revote and ratification). Director Clark took no action on his knowledge that Director Farah had a

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 <sup>&</sup>lt;sup>94</sup> See Board Meeting Minutes for the December 14, 2022 meeting at YouTube link:
 https://go.boarddocs.com/wa/ksdwa/Board.nsf/files/CMSVNQ819779/\$file/Board%20Minutes%20121422.pdf
 <sup>95</sup> See Agenda at https://go.boarddocs.com/wa/ksdwa/Board.nsf/goto?open&id=CLM2K3027EE5.

<sup>96</sup> See <u>AGO 1954 No. 317</u>.

conflict in the Living Well Kent contract without first disclosing the conflict, and Director Clark knew that Director Farah had voted to approve a contract in which he was beneficially interested.

J. Prior Knowledge of Conflict of Interest of Board Member; Arbitrary Actions.

Recall Petitioners contend that Board President Margel, Superintendent Vela, and Directors Farah and Clark had prior knowledge of Director Awale Farah's conflict of interest in a contract with the Kent School District (during the development of Resolution 1669), and the KSD Board (at the advice of Paul Brachvogel) had previously, and erroneously, interpreted Director Farah's beneficial conflict of interest in the Living Well Kent contract with KSD in a way that allowed the contract to proceed (when it should have been void or invalid given Director Farah's beneficial interest in contract and for which there is no exception in law) <sup>96</sup>—but they denied due process and took adverse action against Director Cook for his remote conflict of interest in the KEA contract with KSD (and for which there is a specific exception in law that allows it). This is an arbitrary application of law regarding conflicts by the KSD Board (through the individual actions of Board Directors Margel and Clark, and former Director Farah, who is not subject to recall).

AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
BP 1002	CODE OF ETHICS AND STANDARDS
	The board of directors, as independently elected officials, recognize and accept the responsibility of the role and personal authority to act only within the school district's structure and the federal and state laws of the United States and State of Washington.
	Based on the Washington School Board Standards of Values and Ethical behavior included in the Washington State School Directors' Association publication Washington School Board Standards, board members agree to the following guidelines:
	Standard 1. Values and Ethical Behavior
	To be effective, an individual school director:
	a. Places students' needs first.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		b. Demonstrates commitment to equity and high standards of achievement for each student.
3		c. Commits to treating each individual with dignity and respect.
4		d. Models high ethical standards.
5		e. Advocates for public education.
6		Standard 2. Leadership
٥		To be effective, an individual school director:
7 8		a. Contributes to thoughtful governance discussions and decisions by being well informed, open-minded and deliberative.
9		b. Understands that authority rests with the board as a whole and not with individual directors.
10		c. Is able to articulate and model appropriate school director roles and responsibilities.
11		d. Actively participates in school director duties and responsibilities.
12		e. Demonstrates group membership and leadership skills, working within the board structure.
13		f. Respects the board's role in policy making and supports all adopted board policies.
14		Standard 3. Communication
15		To be effective, an individual school director:
16		a. Builds and maintains positive connections with the community and staff.
17		b. Communicates accurately and honestly, with awareness of the impact of his/her words and actions.
18		c. Listens carefully and with an open mind.
19		d. Maintains civility and treats all people with respect.
20		e. Maintains confidentiality of appropriate matters.
20		f. Refers and guides people with concerns to appropriate staff.
21		g. Welcomes parent, student and community input.
22		Standard 4. Professional Development
23		To be effective, an individual school director:
24		a. Commits the time and energy necessary to be informed and competent.
25		b. Keeps abreast of current issues, research, applicable laws, regulations, and policies that affect public education.
26		c. Participates in professional development, individually and with the board/ superintendent team.
27		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Standard 5. Accountability
3		To be effective, an individual school director:
4		a. Is accountable to the community.
5		b. Takes personal responsibility for his/her own words and actions.
3		c. Respects and abides by board decisions.
6 7		d. Meets expectations for transparency, including disclosing potential conflicts of interest and refraining from discussing or voting on those issues.
8		e. Complies with board policies/procedures and the law.
9	BP 1610	CONFLICTS OF INTEREST – BOARD & SUPERINTENDENT
10		No school director or the superintendent may benefit, directly or indirectly, in any contract made by, through or under the supervision of the director or superintendent, except as provided below:
11 12		No board member or employee of the board will have any monetary interest, directly or indirectly, in any contract, purchase of materials, or activity paid for from school funds except as permitted by law;
13		An individual director may be designated as clerk and/or purchasing agent at the prevailing hourly wage;
<ul><li>14</li><li>15</li></ul>		The spouse of a director or the superintendent may be employed as a substitute teacher on the same terms and at the same compensation as other substitute teachers in the district. The superintendent must find that
16 17		the number of qualified substitute teachers in the district is insufficient to meet the anticipated needs for short-term and one-day substitute teachers, and the superintendent must ensure that substitute teachers are assigned to available positions in a fair and impartial manner;
		Prior to approval of the employment of a director or spouse of a school
18		director or superintendent, the board of directors will be advised of the number of other individuals who are qualified for and interested in the
19		position(s) to be filled. The district will not discriminate in any way
20		against any applicant for a certified position or any certificated employee on the basis of a family relationship with a school director or the
21		superintendent. All employment decisions will be made on the basis of choosing the applicant which furthers the best interest of the school
22		district;
23		If a person is employed by the district under contract as a classified or certificated employee before his or her spouse becomes a director or
24		superintendent, the contract can be renewed for further employment, provided that the terms of the contract are commensurate with the pay
25		plan or collective bargaining agreement operating in the district for that position; or
26		The director or officer has only a remote interest in a contract and the interest is disclosed prior to board action and recorded in the official
27		minutes.

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		Whenever a director, or his or her spouse or dependent is employed by
3		the district, the director will refrain from participating in or attempting to influence any board action affecting the employment status of the director, spouse or dependent. Actions affecting employment status
4		include, but are not limited to, hiring, establishing compensation and fringe benefits, setting working conditions, conducting performance
5		evaluations, considering or imposing discipline and termination.
6 7		The superintendent will maintain a log of any contract subject to this policy and annually or when a new director assumes office, will inform the board of the existence of all such contracts.
8	The Fiduciary	DUTY TO DISCLOSE PERSONAL INTEREST
9	Obligations of Public Officials	A public official has an affirmative duty to disclose material information to the public employer. When an official fails to disclose a personal
10	Volume 9, Number 2 p. 321	interest in a matter over which she has decision-making power, the public is deprived of its right either to disinterested decision making
11	p. 321	itself or, as the case may be, to full disclosure as to the official's potential motivation behind an official act.
12 13		United States v. Woodward, 149 F.3d 46 (1st Cir. 1998) at 62 (quoting United States v. Sawyer, 85 F.3d 713, 724 (1st Cir. 1996)); see also United States v. Wecht, CRIM. 06-0026, 2008 WL 2223869, at *6 (W.D. Pa. May 23, 2008) (quoting Woodard, 149 F.3d at 62).
14	RCW 42.17A.710	STATEMENT OF FINANCIAL AFFAIRS
15		Director Farah violated RCW 42.17A.710 by attempting to remove his
16		spouse's information from F-1 reporting. Board Directors Margel and Clark knew of Director Farah's conflict of interest with Living Well Kent, as well as his attempt to remove his spouse's information from F-1
17		reporting. They allowed a Living Well Kent contract to proceed (and
18		voted to approve) a contract with Living Well Kent on December 2022, while Awale Farah was a member of the Board.
19	Chapter 42.20 RCW	MISCONDUCT OF PUBLIC OFFICERS
20		42.20.040 False report.  42.20.050 Public officer making false certificate.
21		Violations RCW 42.20.040 and 42.20.050: Director Farah removed his
22		spouse's information from F1 report for 2022 (received warning from PDF and was ordered to correct/revise his F1 report.
23		42.20.080 42.20.100 Other violations by officers. Failure of duty by public officer a misdemeanor.
24	RCW 42.23.020	DEFINITIONS
25		For the purpose of Chapter 268, Laws of 1961:
<ul><li>26</li><li>27</li></ul>		(1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		(2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and
3 4		assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;
		(3) "Contract" shall include any contract, sale, lease or purchase;
5 6		(4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.
7	RCW 42.23.030	INTEREST IN CONTRACTS PROHIBITED—EXCEPTIONS
8		No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the
9		supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any
10		compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.
11		
12		A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested
13		even though one of the exemptions allowing the awarding of such a
14		contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the
15		formation of the contract.
16		The remote interest exception only applies to non-salaried officers of the Board. Director Farah's spouse is a salaried officer on the Board for Living Well Kent
17		Contract with Living Well Kent is void / invalid.
18		Violation of statutory prohibition against private interests in public contracts.
19		Living Well Kent is "contracting party"
20		More than 1% ownership; Executive Director; Founder of Living Well Kent; Salaried officer of the Living well Kent Board of Directors
21	RCW 42.23.040	REMOTE INTERESTS
22		A municipal officer is not interested in a contract, within the meaning of
23		RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official
24		municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of
25		the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient
26		for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:
27	<del> </del>	

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		(1) That of a nonsalaried officer of a nonprofit corporation;
3		(2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
4		(3) That of a landlord or tenant of a contracting party;
5 6		(4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.
7 8		None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.
9	RCW 42.23.050	PENALTIES (GROUNDS FOR FORFEITURE OF OFFICE)
10		Any contract violating the statute is void.
11		Director Farah did not properly disclose a spousal conflict of interest in contract (regarding Living Well Kent) to the public or to the rest of the KSD Board or Kent School District, which is required by law, prior to
12 13		voting on, in his capacity as a Kent School District Board Member, a contract in which he is beneficially interested through his marital community.
14	RCW 42.23.070	PROHIBITED ACTS
15		(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
16 17		(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a
18		source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
19		(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would
20 21		require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
		(4) No municipal officer may disclose confidential information gained
22 23		by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.
24	City of Northport v.	CONTRACT IS VOID
25	Northport Town Site Co., 27 Wash. 543	Long experience has taught lawmakers and courts the innumerable and insidious evasions of this salutary principle that can be made, and
	(1902)	therefore the statute denounces such a contract if a city officer shall be interested not only directly, but indirectly. However devious and
26		winding the chain may be which connects the officer with the forbidden

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		contract, if it can be followed and the connection made, the contract is void.
3		See MRSC: Knowing the Territory—Basic Legal Guidance for
4		Washington City, County and Special Purpose Districts
5		" But courts find the requisite interest where the officer owns shares in the corporation" <i>City of Northport v. Northport Townsite, Co.</i> , 27 Wash. 543 (1902).
	City of Raymond v.	PROHIBITION OF CONTRACT APPLIES
7 8	Runyon (1998)	Members of a governing body are more broadly and directly affected because the municipality's contracts are made, generally, by or under the
9		supervision of that body, in whole or in part. It does not matter whether the member of the governing body voted on the contract in which they
10		had a financial interest; the prohibition still applies (City of Raymond v. Runyon (1998)).
11	AGO 53-55 No. 317	COURTS FIND THE REQUISITE INTEREST WHERE THE OFFICER OWNS SHARES IN THE CORPORATION
12		If the director is interested, the contract will be invalid. It is well settled
13		that a financial community interest is sufficient to call RCW 28.58.290 or RCW 42.20.010 (2) into operation where one spouse deals as a
14		<b>public officer with the other.</b> See, respectively, Directors of School District No. 302 v. Libby, supra, and State v. Miller, 32 Wn. (2d) 149. Under the rule of Mumma v. Brewster, 174 Wash. 112, it may not
15 16		be enough that the public officer is also an officer of the corporation with which he dealsalthough he might be biased in its favor if his
		private compensation is not affected by the public contract. But courts find the requisite interest where the officer owns shares in the
17 18		corporation. <i>See City of Northport v. Northport Townsite Co.</i> , 27 Wash. 543, and the extensive annotation in 140 A.L.R. at page 344. On the facts stated, the director here would have such an interest.
19	AGO 1954 No. 317	If the director is interested, the contract will be invalid. It is well settled
20		that a financial community interest is sufficient to call RCW 28.58.290 or RCW 42.20.010 (2) into operation where one spouse deals as a public
21		officer with the other. See, respectively, <i>Directors of School District No. 302 v. Libby, supra</i> , and <i>State v. Miller</i> , 32 Wn. (2d) 149. Under the
22		rule of <i>Mumma v. Brewster</i> , 174 Wash. 112, it may not be enough that the public officer is also an officer of the corporation with which he
23		deals—although he might be biased in its favor—if his private compensation is not affected by the public contract. <b>But courts find the</b>
24		requisite interest where the officer owns shares in the corporation. See City of Northport v. Northport Townsite Co., 27
25		Wash. 543, and the extensive annotation in 140 A.L.R. at page 344. On the facts stated, the director here would have such an interest.
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- 1		

1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		We think that it must be concluded that the contract would be
3		invalid in the presence of interest, whether or not the director participated in action by the board upon it.
4	MRSC: Knowing the	Guidance from MRSC: So as to not influence.
5	<u>Territory—Basic</u> <u>Legal Guidance for</u> Washington City,	Page 8: "In other words, assuming that the clerk or treasurer has been given no power of supervision or control over a city's contracts, they
6	County and Special Purpose Districts	would be prohibited from having an interest only in contracts affecting their own office, such as the purchasing of supplies or services for that office's operation. Members of a governing body are more broadly and
7 8	(p. 8, 9, 11, 12)	directly affected because the municipality's contracts are made, generally, by or under the supervision of that body, in whole or in part. It
9		does not matter whether the member of the governing body voted on the contract in which they had a financial interest; the prohibition still applies (City of Raymond v. Runyon (1998))."
10		Page 9: Subject to certain "remote interest" exceptions, explained later
11		in this section, a member of a governing body who has a forbidden interest may not escape liability simply by abstaining or taking no part in the governing body's action in making or approving the contract. See
12		AGO 53-55 No. 317.
13		Both direct and indirect financial interests are prohibited, and the law also prohibits an officer from receiving financial benefits from anyone
14		else having a contract with the municipality if the benefits are in any way connected with the contract. In an early case involving a similar statute, where a mayor had subcontracted with a prospective prime
15 16		contractor to provide certain materials, the state supreme court struck down the entire contract with the following expression of its
		disapproval:
17 18		Long experience has taught lawmakers and courts the innumerable and insidious evasions of this salutary principle that can be made, and therefore the statute denounces such a contract if a city officer shall be
19		interested not only directly, but indirectly. However devious and winding the chain may be which connects the officer with the forbidden
20		contract, if it can be followed and the connection made, <b>the contract is void</b> ( <i>Northport v. Northport Townsite Co.</i> (1902)).
21		Page 11: If an exception applies to a particular contract, the municipal
22		officer may not vote for its authorization, approval, or ratification and the interest of the municipal officer must be disclosed to the governing body and noted in the official minutes or other similar records before the
23		contract is formed.
24		The conditions for the exemption in those cases of "remote interest" are as follows:
25 26		The officer must fully disclose the nature and extent of the interest, and it must be noted in the official minutes or similar records before the contract is made.
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1	AUTHORITY OR EXHIBIT	SUPPORT FOR PETITIONERS' POSITION ON RECALL
2		The contract must be authorized, approved, or ratified after that disclosure and recording.
3 4		The authorization, approval, or ratification must be made in good faith.
		Page 12: Penalties:
5 6		<ul> <li>A public officer who violates chapter 42.23 RCW may be held liable for a \$500 civil penalty "in addition to such other civil or criminal liability or penalty as may otherwise be imposed."</li> </ul>
7		<ul> <li>The contract is void, and the jurisdiction may avoid payment under the contract, even though it may have been fully performed by</li> </ul>
8		<ul><li>another party.</li><li>The officer may have to forfeit their office.</li></ul>
9	Their J Charles or	
10	<u>United States v.</u> <u>Lopez-Lukis, 102</u>	DUTY TO CONSTITUENTS FIDUCIARY DUTY TO THE ELECTORATE
11	F.3d 164, 1169 (11th Cir. 1997)	The crux of this theory is that when a political official uses his office for
12	<u>CII. 19977</u>	personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest. Elected officials
13		generally owe a fiduciary duty to the electorate. See Shushan, 117 F.2d at 115 (noting that "[n]o trustee has more sacred duties than a public
14		official"). When a government officer decides how to proceed in an official endeavor — as when a legislator decides how to vote on an issue
15		— his constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes his decision based
16		on his own personal interests — as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest — the
17		official has defrauded the public of his honest services. See United States
18		v. Sawyer, 85 F.3d 713, 724 (1st Cir. 1996) ("The cases in which a deprivation of an official's honest services is found typically involve either bribery of the official or her failure to disclose a conflict of
19		interest, resulting in personal gain.").
20		An official "has defrauded the public of his services," if he "secretly makes [an official] decision based on his own personal interests" rather than the best interests of his constituents.
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# XII. FORM OF PETITION(S) FOR RECALL

Pursuant to RCW 29A.56.160, the Petition(s) for Recall will be in the following form(s):

## PETITION FOR THE RECALL OF TIM CLARK

<u>WARNING</u>: Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both. <u>RCW 29A.72.140</u>.

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Petition for the recall of Kent School District No. 415 Board Director TIM CLARK (District 5) to the Honorable 2 We, the undersigned citizens and legal voters within the boundaries of Kent School District No. 415 where the recall is to be held, respectfully direct that a special election 3 be called to determine whether or not Kent School District Board Director TIM CLARK shall be recalled and discharged from his office, for and on account of his having 4 committed the act or acts of malfeasance or misfeasance while in office, or having violated his oath of office, as the case may be, in the following particulars: 5 [BALLOT SYNOPSIS] 6 and each of us for himself or herself says: I have personally signed this petition; I am a 7 legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated, and to my 8 knowledge, have signed this petition only once. The Petition for Recall will include a place for each petitioner to sign and print his or her 9 name, and to add the address, city, and county at which he or she is registered to vote. 10 11 XIII. CONCLUSION 12 If the Petition for Recall is granted by the King County Superior Court, it will be 13 presented for review, consideration and signature to citizens and legal voters that reside within 14 the boundaries of Kent School District No. 415. 15 RESPECTFULLY SUBMITTED this 25th day of February, 2025. 16 RECALL PETITIONERS 17 /s/ Greta Nelson GRETA NELSON 18 19 20 /s/ Michele Bettinger 21 MICHELE BETTINGER 22 23 24 /s/ Lori Waight LORI WAIGHT 25 26 27

RECALL PETITIONERS GRETA NELSON MICHELE BETTINGER LORI WAIGHT

2	EXHIBIT #	DESCRIPTION
3	1	PDC Complaint Against Awale Farah; Michele Bettinger Emails and Records Requests re Living Well Kent
4	2	Foster Garvey Memo (P. Stephen DiJulio)
5	3	Resolution 1669; Notice of Intent and Purpose
6	4	March 7, 2024 Motion to Re-Open Vote on Resolution 1669
	5	May 22, 2024 Kent Labor Alliance Vote of No Confidence
7	6	Kent Reporter Article re Kent Labor Association Vote of No Confidence
8	7	March 7, 2024 Email to KSD Board (Greta Nelson)
9	8	March 13, 2024 Greta Nelson Public Comment
10	9	March 19, 2024 Email to KSD Board (Greta Nelson)
10	10	March 19, 2024 Greta Nelson Facebook Post to KSD Community
11	11	March 23, 2024 Email to KSD Board (Donald Cook)
12	12	March 27, 2024 Greta Nelson Public Comment
13	13	March 28, 2024 Greta Nelson Facebook Post to KSD Community
14	14	August 2, 2024 P. Stephen DiJulio Letter on Behalf of Defendants to Donald Cook and Greta Nelson in Resolution 1669 Litigation
15	15	August 8-9, 2024 Email re Settlement between Lara Hruska of Cedar Law and P. Stephen DiJulio of Foster Garvey
16	16	September 3, 2024 Declaration of Christie Padilla re Resolution 1669
17	17	March 7, 2024 and March 14, 2024 Paul Brachvogel Memos to Superintendent Vela (obtained via MuckRock.com)
18	18	Joseph Riley and Allison Riley Amended Complaint re OPMA Violations Related to Superintendent Evaluation
19 20	19	Resolution 1641 (signed by Board President Meghin Margel, Tim Clark, and Awale Farah on April 26, 2023)
21	20	April 10, 2024 and June 14, 2024 Lori Waight Emails re Accountability Audit and Lunch Debt
22	21	June 21, 2024 Superintendent Vela Signed Statement of Understanding with PDC
23	22	Superintendent Vela's Board Evaluations for 2022-2023, 2023-2024, and his Self-Evaluation
24	23	Superintendent Vela's Original Contract and Extension
25	24	June 12, 2024 Lori Waight Email re Larry Nyland and Superintendent and
26		Consultant for Superintendent—and Consultant for KSD Board on how to Evaluate Superintendent
27		June 12, 2024 Donald Cook Forward of Lori Waight Email to Board

1	EXHIBIT #	DESCRIPTION
1		Members
2		June 11, 2024 Lori Waight Email to KSD Public Records with Exchanges Between State Auditor's Office and also Daman Hunter of KSD (and
3		including an earlier October 25, 2022 email from Public Records Officer
4		stating that no contract existed for the consultant work by Larry Nyland); In response to her June 11 email to KSD Public Records, Ms. Waight received a copy of a May 28, 2024 contract between KSD and Larry
5		Nyland
6	25	Joseph Riley PDC Complaint; Emails with PDC
7	26	Multiple Michele Bettinger Emails re Superintendent Evaluation and Contract—May 4, 2024; November 6, 2024; December 9, 2024; January 31, 2025
8 9 10	27	February 28, 2024 Former KSD Board Director Michele Bettinger's Facebook Post with Public Comment Made at February 28 Board Meeting; and February 27 and 28, 2024 Email Exchanges Between Michele Bettinger and WSSDA re Resolution 1669
11	28	Joe Riley Emails re Strategic Plan, Superintendent Evaluation Contract Extension
12	29	Living Well Kent's Current Leadership and Officers of the Board
13	30	December 11, 2024 Lori Waight Email re PRA Disclosure via MuckRock and Paul Brachvogel March 7 and March 14, 2024 Memos
14	31	September 17, 2024 Kent Reporter Article re Superintendent Contract Extension
15	32	March 28, 2024 Declaration of Michele Bettinger
16	33	December 11, 2024 Greta Nelson Email to KSD Board
17	34	Email Between Counsel re Process Service in Resolution 1669 Litigation
18	35	Joseph Riley Emails and Documentation Obtained via Public Records Request regarding Sole Source District Contract—Apptegy

PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT SCHOOL DISTRICT NO. 415 - 178

**December 8, 2021** 

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• Event: Awale Farah and Tim Clark are sworn in as KSD Board Directors at a regular meeting following certification of the November 2021 election results.

PETITION FOR THE RECALL OF A BOARD DIRECTOR OF KENT SCHOOL DISTRICT NO. 415 - 179

RECALL PETITIONERS
GRETA NELSON
MICHELE BETTINGER
LORI WAIGHT

1	• Cite: Charge Five (Timeline re Consultant Dr. Lawrence Nyland & Superintendent Contract, June 21, 2022).		
2	June 22, 2022		
3	• <b>Event</b> : Superintendent Vela's original contract is approved by the KSD Board, signed by then-Board President Leslie Hamada, effective this date.		
5	Cite: Charge Five (Timeline re Consultant Dr. Lawrence Nyland & Superintendent Contract, June 22, 2022).		
6	ne 29, 2022		
7 8	• Event: KSD Board re-votes and ratifies the March 9, 2022 LWK contract at a regular meeting. Director Farah recuses himself following discovery of his conflict of interest.		
9	Cite: Charge Six (June 29, 2022 Meeting—Re-Vote and Ratification of Living Well Kent Contract).		
10	June 30, 2022		
11	• <b>Event</b> : Voucher payment of \$21,635 to Learning Unlimited from the General Fund.		
12	• Cite: Charge Five (Vouchers for KSD payments to Learning Unlimited after October 13, 2021).		
13 14	July 7, 2022		
15	• <b>Event</b> : Voucher payment of \$14,342 to Learning Unlimited from the General Fund, reaching a running total of \$75,100 since November 2021.		
16	• Cite: Charge Five (Vouchers for KSD payments to Learning Unlimited after October 13, 2021).		
17 18	July 13, 2022		
19	• Event: Dr. Nyland participates in a meeting or presentation with the KSD Board (no voucher payment during this period until March 2023).		
20	Cite: Charge Five (August 24, 2022—Informational Agenda item for Consultant).		
21	August 24, 2022		
22 23	• Event: KSD engages Dr. Nyland for strategic leadership consulting (up to \$75,000, General Fund) at a regular meeting, listed as an "Information" item, with no contract or Board approval provided.		
24	• Cite: Charge Five (August 24, 2022—Informational Agenda item for Consultant).		
25	September 14, 2022		
26 27	• Event: Meghin Margel is appointed to fill a KSD Board vacancy (District 2) and sworn in at a regular meeting.		

### **November 3, 2022**

- Event: Waight forwards her email exchange with Hunter to the Washington State Auditor's Office after a call with Shirley Christiansen.
- Cite: Charge Five (Timeline re Consultant Dr. Lawrence Nyland & Superintendent Contract, November 3, 2022).

### **November 9, 2022**

- Event: Dr. Nyland participates in a meeting or presentation with the KSD Board.
- Cite: Charge Five (August 24, 2022—Informational Agenda item for Consultant).

#### **December 14, 2022**

- Event: KSD Board reorganizes leadership at a regular meeting: Tim Clark becomes Board President, Awale Farah becomes Vice President. Later, the Board approves a third LWK contract (Office of Refugee and Immigrant Support Assistance Grant); Farah recuses himself, then has an outburst during his board report.
- Cite: Charge Six (December 14, 2022 Meeting: Tim Clark Becomes Board President).

### **January 24, 2023**

- **Event**: Dr. Nyland participates in a meeting or presentation with the KSD Board, prior to the first contract being signed.
- Cite: Charge Five (August 24, 2022—Informational Agenda item for Consultant).

#### March 7, 2023

- Event: KSD enters into a retroactive contract (SO230301P) with Dr. Nyland/Learning Unlimited for the 2022-2023 school year (up to \$60,000, General Fund), signed by Superintendent Vela, with no Board approval.
- Cite: Charge Five (March 7, 2023—Contract with Dr. Lawrence Nyland / Learning Unlimited).

#### March 16, 2023

- Event: Voucher payment of \$34,083 to Learning Unlimited from the General Fund.
- Cite: Charge Five (Vouchers for KSD payments to Learning Unlimited, March 7, 2023).

### **April 5, 2023**

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- Event: Special Board meeting with a legal update from General Counsel Paul Brachvogel and "special guests" P. Stephen DiJulio (Foster Garvey) and Kris Lawrence (Propel Insurance). Margel is absent; Vice President Awale Farah presides. Topics include conflicts of interest and insurance coverage limits (no coverage for misfeasance/malfeasance).
- Cite: April 5, 2023 Special Meeting—Legal Update from Paul Brachvogel.

GRETA NELSON

MICHELE BETTINGER LORI WAIGHT

PETITION FOR THE RECALL OF A BOARD DIRECTOR

OF KENT SCHOOL DISTRICT NO. 415 - 184

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#### **December 14, 2023**

- Event: Voucher payment of \$1,375 to Learning Unlimited from the General Fund.
- Cite: Charge Five (Vouchers for KSD payments to Learning Unlimited, March 7, 2023).

## **January 10, 2024**

- Event: Private meeting between Board President Margel, Superintendent Vela, General Counsel Paul Brachvogel, and Director Cook, where Margel asks if Cook's wife will step down from her KEA union role (deemed an unfair labor practice under RCW 41.56.140).
- Cite: Facts Related to Charges One Through Four (January 10, 2024 Meeting at KSD).

### **January 24, 2024**

- **Event**: Improperly noticed Executive Session of the KSD Board to discuss the first version of the Foster Garvey Memo regarding excluding Director Cook from labor-related closed sessions. Cook demands a public hearing, which is denied.
- Cite: Facts Related to Charges One Through Four (Improperly Noticed Executive Session); Charge Two (Foster Garvey Memo used for Board Deliberation).

## **January 30, 2024**

- **Event**: Paul Brachvogel emails the second version of the Foster Garvey Memo to the KSD Board (a public record).
- Cite: Facts Related to Charges One Through Four (Disclosure of Foster Garvey Memo).

### **February 7, 2024**

- **Event**: Improperly noticed Executive Session of the KSD Board to further discuss the Foster Garvey Memo and Resolution 1669 development.
- Cite: Facts Related to Charges One Through Four (Improperly Noticed Executive Session).

### February 14, 2024

- **Event**: Improperly noticed Executive Session of the KSD Board to discuss Resolution 1669 and adverse action against Director Cook.
- **Cite**: Facts Related to Charges One Through Four (Improperly Noticed Executive Session).

### February 14, 2024

- Event: At a regular meeting, Director Cook makes a privileged motion (seconded by Director Song) for reimbursement of legal fees related to recent issues, alluding to OPMA violations; the motion fails.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (February 14, 2024).

### February 24, 2024

- Event: Agenda for the February 28, 2024 regular meeting, including Resolution 1669, is posted publicly by Board President Margel and Superintendent Vela on the District's website.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (February 24, 2024).

### February 24, 2024

- **Event**: Director Cook posts the Foster Garvey Memo on Facebook, prompting Greta Nelson to attend her first Board meeting.
- Cite: Facts Related to Charges One Through Four (Disclosure of Foster Garvey Memo); Summary / Timeline of Events Related to Resolution 1669 (February 24, 2024).

### February 27-28, 2024

- **Event**: Michele Bettinger exchanges emails with WSSDA regarding Resolution 1669 concerns.
- Cite: Facts Related to Charges One Through Four (Former KSD Board Director Michele Bettinger's Public Comment on February 28, 2024).

### February 28, 2024

- Event: KSD Board enacts Resolution 1669 at a regular meeting, creating the Labor Policy Committee and excluding Director Cook from labor-related closed sessions. Directors Margel, Farah, and Clark exhibit hostility toward Directors Cook and Song; public comments oppose the resolution.
- Cite: Facts Related to Charges One Through Four (Background and Events Leading to the Adoption); Charge One (Lack of Decorum and Civility); Charge Two (Public Hearing Requested by Director Cook).

#### March 7, 2024

- **Event**: Paul Brachvogel drafts a memo to Superintendent Vela regarding censuring Director Cook, related to Resolution 1669.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (March 7, 2024).

#### March 7, 2024

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- Event: Greta Nelson emails the KSD Board demanding suspension of Resolution 1669.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (March 7, 2024).

#### March 11, 2024

- Event: Brachvogel emails his March 7 memo to a student, cc'ing Public Records Officer Dawn Marie Boster.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (March 11, 2024).

RECALL PETITIONERS GRETA NELSON MICHELE BETTINGER LORI WAIGHT

#### March 29, 2024

- Event: Greta Nelson and Director Cook file separate Notices of Appeal of Resolution 1669 with King County Superior Court (later consolidated under Case No. 24-2-06877-5 KNT), slightly missing the 30-day deadline for Board Secretary notice.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (March 29, 2024).

### March 30, 2024

- **Event**: Nelson and Cook correct their filing error by emailing formal notice to the Board Secretary.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (March 30, 2024).

### **April 10, 2024**

- **Event**: Lori Waight emails the KSD Board and State Auditor regarding student lunch debt accountability.
- Cite: Charge Five (School Lunch Debt).

### **April 24, 2024**

- Event: KSD Board approves a sole-source contract with Apptegy for a communication platform (\$63,500 setup, \$159,650 annual subscription) at a regular meeting, allegedly bypassing proper bid processes.
- Cite: Charge Five (Violation of RCW 39.26.140 re Sole Source Contract—Apptegy).

#### May 4, 2024

- **Event**: Michele Bettinger emails about transparency in Superintendent Vela's evaluation process.
- Cite: Charge Five (Superintendent Vela's Evaluation Process Not Transparent).

### May 8, 2024

- **Event**: Kent Labor Alliance (KLA) representatives comment at a regular meeting, refuting KSD claims of union opposition to Director Cook's participation in bargaining.
- Cite: Summary / Timeline of Events Related to Resolution 1669 (May 8, 2024).

#### May 15, 2024

- **Event**: Improper Executive Session with Dr. Nyland to discuss Superintendent Vela's evaluation materials (subject of an OPMA lawsuit by Joseph and Allison Riley).
- Cite: Charge Five (May 15, 2024—Improper Executive Session with Dr. Nyland).

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1	• Cite: Charge Five (June 12, 2024 Lori Waight Email re Nyland Contract; June 12, 2024 Donald Cook Forward).		
2	June 13, 2024		
3 4	• <b>Event</b> : Ex Parte hearing for a Temporary Restraining Order (TRO) to restrain enforcement of Resolution 1669; TRO denied, but a June 27 hearing on a preliminary injunction is allowed.		
5	• Cite: Summary / Timeline of Events Related to Resolution 1669 (June 13, 2024).		
6	June 14, 2024		
7	Event: Lori Waight emails the KSD Board and State Auditor again re lunch debt.		
8	Cite: Charge Five (School Lunch Debt).		
9	June 17, 2024		
10 11	• <b>Event</b> : Tentative Agreement reached between KEA and KSD for a 2024-2027 CBA; Teamsters also reach a tentative agreement around this time.		
12	Cite: Summary / Timeline of Events Related to Resolution 1669 (June 17, 2024).		
13	June 21, 2024		
14	• Event: Superintendent Vela signs a Statement of Understanding with the PDC, acknowledging a 2023 violation of RCW 42.17A.555 for using KSD facilities to promote ballot propositions.		
15	Cite: Charge Seven (2023 PDC Complaint).		
16	June 26, 2024		
17 18 19	• Event: KSD Board votes to approve KEA and Teamsters CBAs for 2024-2027 at a regular meeting; Cook is excluded from the related closed sessions of the Board discussing or deliberating collective bargaining matters as related to the CBAs leading up to this vote.		
20	• Cite: Summary / Timeline of Events Related to Resolution 1669 (June 26, 2024).		
21	June 27, 2024		
22	• <b>Event</b> : Hearing on a preliminary injunction against Resolution 1669; Judge Straley denies the injunction.		
23	• Cite: Summary / Timeline of Events Related to Resolution 1669 (June 27, 2024).		
24	July 11, 2024		
25	• <b>Event</b> : Voucher payment of \$27,037 to Learning Unlimited from the General Fund.		
26   27	• Cite: Charge Five (Vouchers for KSD payments to Learning Unlimited, May 22, 2024).		