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FILED

September 22, 2021
KITSAP COUNTY CLERK
DAVID T. LEWIS III

SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

JEFFREY DAILY,

Petitioner,

v.

SOUTH KITSAP SCHOOL BOARD,

Respondent.

No. 21-2-01233-18

RESPONDENT SOUTH KITSAP
SCHOOL BOARD'S AMENDED
ANSWER AND AFFIRMATIVE
DEFENSES

Respondent SOUTH KITSAP SCHOOL BOARD, with the exception of Petitioner Daily, (the "Board") hereby respond to the Notice of Appeal to Superior Court of School Board Decision ("Notice") filed by Petitioner JEFFREY DAILY.

Admit the South Kitsap School District (the "District") is located at 2689 Hoover Ave SE, Port Orchard, Washington 98366.

Admit the appeal of the Board's July 21, 2021, decision is timely filed. The Board denies the appeal is timely filed for any action that occurred prior to July 21, 2021.

I. BACKGROUND

Paragraph 4:17-25.¹ Admit that Petitioner was duly elected in 2019 to serve as board member for the South Kitsap School District. Admit Petitioner entered office in 2020. The Board denies the remainder of this paragraph.

¹ Petitioner's Complaint fails to number the specific allegations of his Complaint. Therefore, Respondent is using the page and line numbers that correspond with Petitioner's Complaint in order to answer Petitioner's allegations.

RESPONDENT SOUTH KITSAP SCHOOL BOARD'S
AMENDED ANSWER AND AFFIRMATIVE
DEFENSES - 1
896171

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Tel. 206.462.6700 Fax 206.462.6701

1 Paragraph 5:1-6. Denied.

2 **II. PETITIONER'S ALLEGATION OF MISCONDUCT**

3 Paragraph 5:10-19: Admit Petitioner presented a letter to Board President Gattenby
4 during the April 21, 2021, Board meeting. Admit President Gattenby ruled Petitioner's actions
5 out of order. Admit Petitioner delivered to President Gattenby two envelopes containing
6 complaints against Director Gattenby and Director Sebren during the May 19, 2021, Board
7 meeting. Admit the Board adopted *Robert's Rules of Order Newly Revised* (12th ed.) as its
8 parliamentary authority through Governance Process GP-5, paragraph 1.c. Respondent denies
9 the remainder of this paragraph.

10 Paragraph 5:21-6:7: Deny the Board took no action in response to Petitioner's letters.
11 Admit the Board took action and voted to deny pursuing Petitioner's letter complaints.
12 Respondent denies the remainder of this paragraph.

13 Paragraph 6:10-7:5. Admit Petitioner made a Motion of Allegations of Misconduct
14 during the July 21, 2021, Board meeting as described in Petitioner's Complaint lines 6:15-7:5.
15 Respondent denies the remainder of this paragraph.

16 Paragraph 7:6-12. Deny Vice President Berg ruled Petitioner's Motion of Allegations of
17 Misconduct out of order. Admit the Motion of Allegations of Misconduct failed. Respondent
18 denies the remainder of this paragraph.

19 **III. ALLEGATIONS AGAINST PETITIONER**

20 Paragraph 7:16-22. Admit that during the April 21, 2021, Board meeting, the Board
21 approved Director Berg's motion to investigate Petitioner's conduct. Admit a third-party
22 attorney, Kris Cappel, was retained to conduct the investigation. Respondent denies the
23 remainder of this paragraph.

24 Paragraph 7:25-8:5. Deny.

25 Paragraph 8:7-20. Admit Kris Cappel conducted an investigation of Petitioner's
conduct. Admit Ms. Cappel produced an investigation report, and a copy of Ms. Capell's

1 investigation report has been provided to Petitioner and Petitioner's counsel. Respondent denies
2 the remainder of this paragraph.

3 Paragraph 8:22-9:2. Deny, the Board has not made a formal motion to censure based on
4 the outcome of Ms. Cappel's investigation. Respondent denies the remainder of this paragraph.

5 **IV. PLANNED CENSURE OF PETITIONER**

6 Paragraph 9:5-14. Deny that censure is a step toward removing an elected official from
7 the Board. The only mechanism for removing an elected Board member is the statutory recall
8 process under RCW 29A.56. Respondent denies the remainder of this paragraph.

9 **V. DEFICIENCY OF UNDERLYING BOARD POLICIES**

10 Paragraph 9:17-20. Deny.

11 Paragraph 10:1-10. Deny. RCW 42.52 does not apply to school board members.

12 Paragraph 10:12-20. Deny.

13 Paragraph. 10:22-11:14. Admit the text of Governance Process GP-12 "Process for
14 Addressing Director Violations." Respondent denies the remainder of this paragraph.

15 Paragraph 11:15-25. Deny GP-12 creates a strict process for addressing director
16 violations. Respondent denies the remainder of this paragraph.

17 Paragraph 12:1-5. Deny.

18 **VI. BASES OF APPEAL**

19 Paragraph 12:8-21. Deny Petitioner is entitled to any relief.

20 **VII. REQUESTING LEAVE TO MOVE FOR TRO/PRELIMINARY INJUNCTION**

21 Respondent denies all allegations contained in the paragraphs under this heading. Deny
22 the standard for preliminary injunction has been met. To date, the Board has not brought a
23 motion to censure Petitioner. Therefore, Petitioner's request for leave to move for
24 TRO/preliminary injunction is premature and should be denied.

25 Paragraph 15:5-10. Deny Petitioner is entitled to any relief.

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VIII. RESPONDENT'S AFFIRMATIVE DEFENSES

By way of further answer, defense, and affirmative defense, and without admitting any allegations previously denied, Respondent allege as follows:

1. Petitioner's claims, in whole or in part, are barred by the applicable statute of limitations;
2. Petitioner failed to exhaust all administrative remedies; and
3. Petitioner's request for a TRO/injunctive relief is premature.

IX. RESPONDENT'S SPECIFIC RESERVATION OF RIGHTS

Respondent specifically reserves the right to amend this answer by adding defenses, affirmative defenses, counterclaims, cross claims, or by instituting third party actions, as additional facts are obtained through further investigation or discovery.

X. RESPONDENT'S PRAYER FOR RELIEF

Respondent respectfully request that the Court:

1. Dismiss Petitioner's Complaint with prejudice and with no recovery or relief to Petitioner;
2. Award Respondent reasonable expenses, costs, and attorney fees incurred in defending this action to the extent allowed by law or equity; and
3. Award Respondent such other and further relief as the Court deems just and equitable.

DATED this 22nd day of September, 2021.

PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

By: /s/ Duncan K. Fobes

Duncan K. Fobes, WSBA 14964
Lauren A. Johnston, WSBA 55510
Attorneys for Respondent