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

JEFFREY DAILY,

Appellant,

vs.

SOUTH KITSAP SCHOOL BOARD,

Respondent.

Case No. 21-2-01233-18

**AMENDED NOTICE OF APPEAL
OF THE FAILURE TO ACT AND
DECISION OF THE SCHOOL
BOARD**

The Appellant, JEFFREY DAILY, by and through his attorney SARAH LIPPEK, whose mailing address is 1424 11th Avenue, Suite 400, Seattle Washington 98122, appeals the failure to act of South Kitsap School Board and a decision of that Board pursuant to RCW Chapter 28A.645.

21-2-01233-18
NTASUP 23
Notice of Appeal to Superior Court
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AMENDED NOTICE OF APPEAL OF THE FAILURE TO ACT
AND DECISION OF THE SCHOOL BOARD - 1

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1 The failure to act and decision is from the South Kitsap School Board. Their address
2 is 2689 Hoover Ave SE, Port Orchard, WA 98366.
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5 At issue is the refusal of the School Board to address, investigate, remedy, or
6 otherwise attend to properly-raised allegations of misconduct; and the unequal
7 treatment of misconduct allegations. This failure is manifest both in the Board's
8 failure to act on allegations of misconduct and on the Board decision of July 21,
9 2021, declining to adopt Mr. Daily's motion to address allegations of misconduct.
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12 This Appeal is timely filed with the proper court, and timely filed with the Secretary
13 of the Board for South Kitsap School District. The Appeal was amended October 24,
14 2022, by leave of the Court, to correctly identify the matter as an appeal.
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16 17 I. BACKGROUND

18 Plaintiff Mr. Daily was democratically elected in 2019 as a representative of the
19 people of south Kitsap County to serve as a member of the South Kitsap School
20 Board. He entered office in 2020. Mr. Daily was elected by a majority of votes on a
21 reform platform emphasizing fiscal responsibility and public transparency. Plaintiff
22 Mr. Daily is proud to serve his constituents, and began his service eager to improve
23 the District's operations. He was unprepared for the level of intense and apparently
24 coordinated resistance he would face.
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2 Since the earliest days of his service, Appellant Mr. Daily has experienced difficulty
3 accessing District financial records; a total lack of traction for his attempts to
4 daylight fiscal and financial decisions; hostile treatment by fellow electeds on the
5 Board; and a near-constant barrage of attacks on his character, personal style, and
6 political opinions.
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10 **II. APPELLANT'S ALLEGATIONS OF MISCONDUCT**

11 Appellant Mr. Daily has attempted to use internal Board processes to address his
12 concerns about potential misconduct on the board. He hand-delivered written
13 allegations of misconduct to the Board, expecting that reporting misconduct would
14 cause the President to initiate the process by which complaints are meant to be
15 handled, according to Board rules.¹ Instead of properly addressing Appellant Mr.
16 Daily's allegations, the President invoked a non-statutory procedural 'rule,'² found
17 nowhere in any Board policy or applicable law, to find Appellant Mr. Daily 'out of
18 order,' thereby burying his complaints.
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27 See Board policy GP-12 on 'Director Violations.'

28 The Vice President is apparently under the misapprehension that Robert's Rules of Order have the force of law, and that misconduct complaints can be buried on procedural bases despite that no clear procedure is provided.

1 Appellant Mr. Daily waited for any indication that his allegations would be afforded
2 the normal attention by the Board. To date, no action appears to have been taken
3 by the Board, by the District, or by the District risk pool or attorneys. There has
4 been no internal counseling of the Board members accused of misconduct, no
5 substantive internal review of Appellant Mr. Daily's allegations, no investigation of
6 the allegations by the District or any other body, and no indication that there is any
7 intention to address the allegations in any way. This is the failure to act from which
8 Appellant Mr. Daily appeals in the instant action.
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12 Stymied by the refusal of the Board to address his complaints, Appellant Mr. Daily
13 made a motion at the Board meeting of July 21, 2021, pleading for the Board to take
14 their duties seriously and do something about his complaints of misconduct.
15

16 Appellant Mr. Daily's motion proposed the following:

- 17 1. That the Board recognize that allegations of misconduct had been brought
18 be Director Daily against several members, whose names would be omitted
19 from the public record at that time.
- 20 2. That the Board President update the board on the response to the allegations
21 of misconduct brought by Director Daily, including informing the board
22 whether and when the internal counseling conversation occurred; and the
23 content and results of that conversation.
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1 3. That if the internal process for handling allegations of misconduct has not
2 begun, the matter would be referred for investigation by a neutral outside
3 investigator through the District risk pool.

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5 4. That allegations of the Board President's own misconduct would be referred
6 for investigation by a neutral outside investigator through the District risk
7 pool, as there is no ability for the President to undertake the internal process
8 in relation to allegations about himself.

9
10 Board Vice President Berg again 'ruled' the motion 'out of order' on the basis of an
11 incorrect application of parliamentary custom. The Board then voted on the motion
12 and it was not approved. This vote completely foreclosed on the possibility that
13 Appellant Mr. Daily's complaints of misconduct would ever be properly handled,
14 either within the Board or by the District. That is the decision of the Board from
15 which Appellant Mr. Daily appeals in the instant matter.
16

17 18 III. ALLEGATIONS AGAINST APPELLANT

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20 In stark contrast to the way Appellant Mr. Daily's allegations were buried, there
21 has been extensive inquiry into specious allegations brought *against* Appellant Mr.
22 Daily by other Board members. Appellant Mr. Daily has been subjected to a months-
23 long 'investigation' of a list of allegations that of behaviors that, even if proven
24 factual, would not constitute violations of any Board or District policy and would
25 certainly not constitute violations of law.
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2 The allegations against Appellant Mr. Daily include: Making public records
3 requests to the District; using the phrase "This is a total waste of time" at a meeting
4 of the Board; answering questions emailed to him by constituents; exercising his
5 free speech rights by speaking as a citizen at a City Council meeting; discussing
6 matters of public concern that had been presented at public meetings of the Board;
7 being criticized in two anonymous comments in an online survey; and generally
8 being 'abrasive.'
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12 These allegations were handled with dispatch by the Board, and were provided to
13 the District risk pool for investigation. The investigator, a Ms. Cappel, recently
14 produced a report of approximately 180 pages regarding the allegations against
15 Appellant Mr. Daily. That report is being kept in a single hard copy in a locked office
16 of the District, and no copy was provided to Appellant Mr. Daily, neither as a Board
17 member, nor as the subject of the allegations, let alone as a concerned public citizen.
18
19 To date, no copy of the report nor any notice of its completion has been provided to
20 Appellant's counsel, despite the District's long awareness that Appellant is
21 represented for the purposes of the investigation against him and any action arising
22 from that investigation. Appellant Mr. Daily was allowed only to view the report on
23 the premises.
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1 It is apparently on the basis of this report, and, frankly, their visible personal
2 animus, that other Board members are planning a move to censure Appellant Mr.
3 Daily.³ The a plan to censure Appellant Mr. Daily is the culmination of 20 months
4 of open hostility from his fellow Board members.
5

6 IV. PLANNED CENSURE OF APPELLANT

7 As the Court is well aware, censure is a step toward removing an elected official
8 from the Board. It is an extremely serious undertaking, and rightly rare. This is
9 because removing a democratically elected official from office *should* be a rare move,
10 one reserved for cases of corruption or harm. It is shocking that it is necessary to
11 say so, in the United States of America, but a properly elected public servant should
12 never be removed from office because of his 'difficult' personality or the exercise of
13 his rights. It is no exaggeration to say that this appeal is urgent, not only for the
14 Appellant, but for the state of democracy in the county.
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19 V. DEFICIENCY OF UNDERLYING BOARD POLICIES

20 Undergirding this particular instance of injustice is a pattern of serious deficiency,
21 not only in the Board's handling of misconduct complaints, but in the very policies
22 they are meant to follow.
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26 ³ It is not speculation that members of the Board are planning a censure motion against Mr. Daily – an email thread
27 with the District risk pool investigator was clearly titled "SKSD [South Kitsap School District] - Censure
Motion/Director Daily."

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2 The applicable policies that govern misconduct are unclear, vague, and incomplete.
3 They contain no guidance on how a complaint is to be submitted to the Board; nor
4 on what bases the Board will evaluate a complaint; nor on when or on what bases
5 the Board will seek independent investigation. Based on the content of the
6 investigatory questions asked of Mr. Daily, it appears that the Board is purporting
7 to enforce various provisions of RCW Chapter 42.52 – but without the required
8 conforming rules or review processes described in RCW 42.52.200(1) and
9 42.52.200(2).
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13 Unfortunately, the result is a Board whose members feel empowered to dismiss and
14 bury complaints about their own misconduct; to selectively apply ethics rules to
15 some members and not others; and to weaponize the process to retaliate against
16 non-conformity. This is a recipe for cronyism, collusion, and a lack of public scrutiny.
17 The rules that have created this untenable situation must be replaced with clear,
18 complete rules that conform with the law and that are approved by an ethics board.
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22 The full text of the 'Process for Addressing Director Violations' (GP-12) is as follows:
23

24 **“GP-12 – Process for Addressing Director Violations**

25 The Board, individually and collectively, is committed to full compliance
26 with the provisions of its own policies. In the event of a director's willful
27

1 and continuing violation of policy, the Board may seek remedy by the
2 following process:

- 3 1. Conversation in a private setting between the director and the Board
4 President or other individual member.
- 5 2. Discussion in a private session between the offending director and the
6 Board (as permitted by law).
- 7 3. Consider public censure of the offending director of the Board.
- 8 4. Remove the offending director from any committee or other Board-
9 designated responsibility, as appropriate.
- 10 5. In cases of nonattendance, declare the seat vacant in accordance with
11 law.”

12 While this is described as a ‘process,’ it is not. It is unclear whether the numbered
13 actions are steps of escalation or a menu of options. There is no indication of how a
14 complaint of misconduct or reports of ‘violation’ might reach the Board and what
15 they are meant to do when one does. There is no requirement for a vote, or who
16 might decide what to do, when, or how. Nor is there any hint as to how the Board
17 might evaluate whether a ‘violation’ has occurred or not. There is no process of
18 investigation by a neutral outside party. This complete lack of clarity opens the door
19 for an unaccountable body that can capriciously punish – and potentially expel – its
20 own members with no checks or balances.

1 It is because of the extraordinary circumstances and heavy implications of this
2 matter that Appellant Mr. Daily requests that this Court take speedy and decisive
3 action, not only to reverse the incorrect actions of the Board, but to forestall their
4 plan to retaliate against a fellow elected by improper proceedings.
5

6 7 VI. BASES FOR APPEAL

8 Appellant is entitled to relief pursuant to RCW Chapter 28A.645 because:
9

- 10 1. The decision and failure to act is inconsistent with the rules
11 of the Board.
- 12 2. The decision and failure to act is arbitrary or capricious.
- 13 3. The decision and failure to act is retaliatory in nature.
- 14 4. The rules of the Board that govern the handling of misconduct complaints
15 are not consistent with the law, in violation of RCW 42.52.200(1).
16
- 17 5. The rules of the Board that govern the handling of misconduct complaints do
18 not appear to have been properly forwarded to or reviewed by the appropriate
19 ethics board before they took effect, in potential violation of RCW
20 42.52.200(2).
21

22 VII. REQUESTING LEAVE TO MOVE FOR TRO/PRELIMINARY 23 INJUNCTION 24

25 Appellant is aware that an emergency temporary injunction would normally be
26 pursued in a separate *ex parte* action, and he will be initiating that procedure if
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1 necessary. However, for the sake of judicial efficiency and consolidation of related
2 matters, Appellant wishes to give this Court opportunity to hear the motion. If
3 granted leave, Appellant Mr. Daily will note a hearing before this Court requesting
4 an emergency temporary injunction staying the Board process of censure against
5 Appellant Mr. Daily. Given the persistent pattern of retaliation and misuse of
6 procedure targeting Appellant Mr. Daily, he has legitimate concern that the filing
7 of the instant action will only accelerate and intensify the retaliatory censure
8 process.
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11 **a. Standards for preliminary injunction are met here.**

12 When determining if preliminary injunctive relief is appropriate, the court analyzes
13 whether the moving party: (1) Has a clear legal or equitable right and (2) Has a
14 well-grounded fear of immediate invasion of that right by the one against whom the
15 injunction is sought, and further must find that (3) That the acts complained of are
16 either resulting in or will result in actual and substantial injury to the moving
17 party.⁴
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20 When deciding if a party has a clear legal or equitable right, the court examines the
21 likelihood that the moving party will prevail on the merits.⁵ While the trial court
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25 ⁴ Rabon v. City of Seattle, 135 Wn.2d 278, 284, 957 P.2d 621 (1998); citing Tyler Pipe Indus., Inc. v. Department of
26 Revenue, 96 Wash.2d 785, 792, 638 P.2d 1213 (1982), reversed on unrelated grounds. See also Kucera v.
27 Department of Transp., 140 Wn.2d 200, 209 (2000).

⁵ Rabon, 135 Wn.2d at 285 (citing Washington Fed'n of State Employees Council 28 v. State, 99 Wn.2d 878, 888,
665 P.2d 1337 (1983)).

1 must reach the merits of purely legal issues for purposes of deciding whether to
2 grant or deny the preliminary injunction, it may not adjudicate the ultimate merits
3 of the case.⁶ A TRO is intended to preserve the status quo until the court can hear
4 an application for a preliminary injunction.⁷
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7 In this instance, Appellant Mr. Daily has a clear legal and equitable right to hold
8 the office to which he was elected. That right was granted by the highest authority
9 of the land: The people. The people of the District elected Mr. Daily to serve as in
10 the office entrusted to him, and their collective democratic will should not be
11 overturned by the improper and retaliatory actions of a few.
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15 Appellant Mr. Daily has a very well-grounded fear that his rights will be violated:
16 The Board has repeatedly announced its intentions to do so, and the whole troubled
17 history of this matter illustrates that pattern.
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20 The acts complained of will result in actual and substantial injury to Appellant Mr.
21 Daily, because if censured, he would be in the course to lose the public office to
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27 ⁶ Rabon, 135 Wn.2d at 285.

⁷ State ex rel Pay Less Drug Stores v. Sutton, 2 Wn.2d 523, 530, 98 P.2d 680 (1940).

1 which he was elected; and his reputation would be permanently and very publicly
2 sullied, substantially impacting his ability to run for elected office in the future.
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5 For these reasons, a preliminary injunction is appropriate. The issues will of course
6 be briefed fully if leave is granted.
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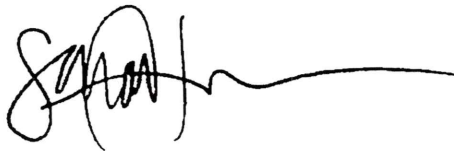
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9 THEREFORE, Appellant asks the Court for judgment:

- 10 1. Changing the decision of the School Board to decline investigation of the
11 misconduct complaints brought by Plaintiff Mr. Daily,
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13 2. Changing the failure of the board to act on Mr. Daily's complaints, and
14 granting other relief as follows:
15
16 3. Striking the rules of the Board related to the handling of misconduct
17 complaints insofar as they are improper;
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19 4. Requiring the South Kitsap School Board to, within 30 days, adopt
20 provisional rules consistent with the law on ethics in public service in RCW
21 Chapter 28A.645; to include a clear, fair, consistent, and transparent
22 procedure by which all misconduct complaints will be handled;
23
24 5. Requiring the South Kitsap School Board to submit the provisional rules for
25 evaluation by the appropriate ethics board prior to adoption;
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- 1 6. Requiring the South Kitsap School Board to, at the direction of the
2 appropriate board of ethics, revise the provisional rules to align with the law
3 on ethics in public service in RCW Chapter 28A.645;
4
5 7. Requiring the South Kitsap School Board to, within 30 days of the approval
6 of the appropriate ethics board, adopt permanently rules for the handling of
7 misconduct complaints consistent with the law on ethics in public service in
8 RCW Chapter 28A.645;
9
10 8. Granting leave to Appellant to make a motion, and set a hearing before this
11 Court, for a preliminary injunction Staying any censure proceedings against
12 Appellant Mr. Daily for the pendency of this action;
13
14 9. Awarding costs and reasonable attorney's fees to Appellant upon submission
15 of a motion for costs and fees and a hearing of that motion;
16
17 10. Awarding any further relief this Court deems proper.

18 RESPECTFULLY SUBMITTED this 18th day of August, 2021:

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20 LAW OFFICES of SARAH LIPPEK^{PLLC}

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Sarah Lippek, WSBA No. 46452