

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CECILIA PALAO-VARGAS AND
JOAN SIAS,

Appellants,

v.

SEATTLE SCHOOL DISTRICT NO. 1,
IN KING COUNTY, STATE OF
WASHINGTON, BOARD OF
DIRECTORS OF SEATTLE SCHOOL
DISTRICT NO. 1, and MARIA
GOODLOE-JOHNSON, Superintendent
and Secretary of the Board,

Respondents.

NO.

NOTICE OF APPEAL

I. INTRODUCTION

1. On July 7, 2010 the Seattle School Board of Directors (Board) accepted Superintendent Dr. Goodloe-Johnson's recommended motion to purchase the Northwest Evaluation Association's Measures of Academic Progress (NWEA/MAP) test for use in the Seattle School District in the 2010-2011 school year for approximately \$450,000. The approved motion stated: "I move that the contract with NWEA be renewed for the 2010-11 school year in the amount of \$453,299." The School Board action report of June 16, 2010 titled "Renewal of

Northwest Evaluation Association (NWEA) contract to allow implementation of Measures of Academic Progress (MAP) in the 2010-2011 school year” is attached (*see attachments 1 - 3*).

2. Appellants Cecilia Palao-Vargas and Joan Sias contend that the District’s recommendation and the Board’s decision to award the NWEA this contract was, at minimum, arbitrary and capricious on the following grounds:

- The School Board did not follow District Policy. Board Policy G45.00 Procurement (*see attachment 4*), states the District shall promote fair competition to the extent practicable, including appropriate documentation of all situations where advertised sealed bids or requests for proposals are not used. The District's Sole-Source Justification Form (*see attachment 5*) for renewal of the NWEA and MAP contract is incomplete, inadequate and likely in violation of State and Federal procurement regulations;
- The expansion of scope and application of the MAP test should open the contract up for public advertisement and open competition per State and Federal procurement regulations;
- The District's vetting of NWEA and MAP is inadequate and likely in violation of State public contracting regulations;

- The State Auditor has repeatedly called into question the District's processes for awarding contracts for services and products (*see attachment 6*)

- The Superintendent's position on the NWEA Board presents a conflict of interest. On January 6, 2010, Dr. Goodloe-Johnson provided to the SPS Board of Directors at its public meeting the disclosure of her appointment and the appointment of her husband, Bruce Johnson, to any non-profit boards (*see attachment 7, and please note the Superintendent did not list her membership of the Board of the Alliance for Education*). She subsequently recused herself from decisions regarding NWEA/MAP, however Appellants point out that the Superintendent was not recused during initial consideration (2007-2008) of MAP, long before she made the Board aware of her appointment to the NWEA Advisory Board. Appellants allege this is a conflict of interest and makes problematic District's perfunctory justification of sole-source procurement.

- The District's claim of sole-source justification, that the vendor provides an exclusive design, is not supported by its action report and fails to answer many important questions before waiver of competitive procurement, namely:
 - Appellants' question the "Sole Source Justification" on the form dated June 9, 2010 by the Director of REA, Brad Bernatek. On page 2 of the form is selected Item 6 "Exclusive design – *item or service possesses a unique function a capability critical in the use of the item or service and is not available from any other sources.*" Under Item 7 "*rationale: see attached Board Action Report*".

- The “Sole Source Justification” is unwarranted and disingenuous for reasons including: 1) The cited school board action report (SBAR) failed to provide a reasonable, clear rationale for the sole source justification, and in particular failed to provide a clear rationale as to why the "Exclusive design" box was selected on the Sole Source Rationale form; 2) the Strategic Plan did not explicitly require the MAP product; 4) MAP’s efficacy for its stated purpose is not proven; and, 5) the School Board’s own report shows that, when surveyed, 70% of teachers did not understand how MAP would inform instruction.
- According to the State Auditor, it is the Board's duty to look out for the best interests of the public. Appellants believe that if the Board were acting in the best interests of the public, as is required by law, the Board would have made an effort to determine whether MAP has well-served its intended purposes. Appellants are not aware of any evidence that shows that the Board made such effort in this instance. Appellants feel that, had the Board made this effort, the Board would have found that MAP is not providing effective formative, summative, and diagnostic assessment information. Appellants feel that by failing to make this effort, the Board failed to serve the best interests of students.
- MAP implementation is for purposes of performance management and evaluation of teacher performance, rather than to put in place an assessment

tool that can be best used to help teachers provide the delivery of effective and efficient instruction for their students.

- Appellants find nothing in the Board Action Report to justify a “Sole Source” classification and see the District as making a choice based on what other large school districts are doing, eg Washington, D.C, rather than what is appropriate for Seattle schools and children
- If appropriate weights were applied to both improved student learning for all students, and providing for effective interventions to struggling students for mastering required grade level skills, Appellants allege district staff’s classification of Exclusive Design for NWEA/MAP could not withstand scrutiny.
- The Board failed to question the justification for “Sole Source” procurement for NWEA/MAP testing. By only asking whether the justification form was filled out rather than examining the reasons underlying the “Sole Source” classification, the Board abrogated its duty to review and approve contracts per District procurement policy.
- Director Sherry Carr asked the only question on July 7, 2010 before the Board’s unanimous 7-0 approval of the NWEA/MAP contract (*documented in video of*

Board meeting). Her question was about “Sole Source Justification” and the answer came from Dr. Goodloe-Johnson that the “Sole Source Justification” form was attached.

- The SPS’s justification form is woefully lacking in specifics, with but only checkboxes to fill out. This is minimal effort on the procurement officers’ part. For example, other public agencies require justification and responses to, at a minimum, the following questions:
 - How was it determined that Vendor is or should be the sole supplier?
 - Why is no other provider suitable for your requirements?
 - Are there unique skills or knowledge required for the vendor?
 - What are the consequences of not approving the sole provider request?
 - What negative consequences will result by formally bidding this requirement?
 - What makes open and competitive procurement impracticable?
 - How was this cost determined to be reasonable?
 - What are other costs incurred from this request?
 - What other methods of fulfilling this requirement have been explored?

- Certification that the preparer(s) making this recommendation to the Agency has/have no financial *or **other beneficial interest*** (emphasis added) in Vendor?
- MAP and its application is inappropriate for use with kindergarteners and those who can't read or use computers, non-English speakers, or children with disabilities;
- Non-English speakers must take the MAP test even if they have only been in school a few days or weeks, so the results are not reliable;
- The MAP test does not align with existing State standards and curriculum, so does not test what children are learning, when they are learning it.
- Based on its application in 2009-2010, MAP does little to inform teachers on student growth. Appellants dispute the District's Research, Evaluation & Assessment department (REA) claim that the custom MAP data reports it created, are "**most helpful**". Teachers found the reports poorly designed for taking formative action. On addition, they found:
 - Test results have been inconsistent, unreliable and not useful.
 - The MAP does not test skills in the order that they are presented and taught during the course of the school year.

- This may partially explain the wide fluctuations in an individual student's MAP scores on the three tests during the course of the school year.
 - Many students experienced drops in MAP scores or wide fluctuations as the year progressed.
 - This variability calls into question the usability of the MAP as either a formative assessment or tool for prescribing particular interventions for remediation of individual students.
- MAP does not serve the purpose for which it is intended. The District has, for many years, failed to provide effective interventions to struggling students choosing to socially promote struggling students rather than effectively and efficiently educating them.
 - Lack of effective interventions and social promotion are both violations of the District's promotion/non-promotion policies D44.00, D45.00, and D46.00 (*see attachments 8 through 10*).
 - These policy violations will continue because the MAP is not an effective formative assessment for monitoring student progress toward the mastery of specific required grade level skills.
- The expenditure of \$450,000 for NWEA/MAP plus other associated costs for computers (which has already cost the District \$4.3 million) is not justified when the MAP is not an efficient, statistically valid or cost effective tool with which to inform instructional practices;

- MAP will be used inappropriately as a tool for teacher evaluation (*see attachment 11, partial chapter provided*). This is clear from the SERVE teacher contract proposal recently put forward by the Superintendent (*see attachment 12*);
- The Board is ignoring warnings from the NWEA as to how the MAP should/should not be used;
- The Board is, again, failing in its duty to supervise the Superintendent and staff.
 - The State Auditor found that the Board has long neglected to adequately supervise the Superintendent, particularly with respect to Nos. 8 and 14 of the Board of Director's Affirmation of Responsibility (*see attachment 13*). In the Affirmation of Responsibility, the Board affirmed that they would: No. 8 - Focus on the policy work (not policy enforcement) of the Board and monitor progress on the indicators of success articulated in our strategic plan, leaving day-to-day operation of the district to the superintendent and staff; and No. 14 - Respect the leadership roles of the board president and superintendent.
 - The Board's vote of 7-0 to accept the Superintendent's recommendation to renew the NWEA/MAP contract without due diligence on its part, is yet another example of the State Auditors'

citing the Board's failure to adequately supervise the Superintendent's day-to-day operation of the school district; and its failure to enforce District policy.

For these reasons, the Appellants assert the Board's action is uninformed and therefore, arbitrary and capricious.

II. PARTIES

1. Cecilia Palao-Vargas is a West Seattle resident with one special-needs child at Lafayette Elementary School. She is very concerned with District policies and practices regarding special education, particularly in light of recent poorly-considered changes to programs. These changes are very likely noncompliant with Federal and State law. She feels strongly that the basic hypothesis underlying MAP testing is false. Children with developmental delays do not learn in a linear fashion. Her child learned letters, numbers, phonics, and colors at two, started reading at three, and yet scores all over the map on standardized tests. Ms. Palao-Vargas and her child's teachers have benefitted from outside testing and comprehensive reassessments to more fully understand how her autistic child learns. As an immigrant and person of Hispanic ethnicity, Ms. Palao-Vargas has very real concerns that the MAP instrument is inappropriate for non-English speakers. Furthermore, she feels strongly that if ineffectual measures like MAP are used to evaluate teachers, children like hers will be unwanted in teacher classrooms, exacerbating existing discrimination against

the disabled. Finally, Ms. Palao-Vargas objects from a public policy standpoint. As a project manager in the public sector, she finds the Board's lack of curiosity with regards to an open competitive procurement process, and the questionable efficacy of this vendor's products to be a failure in their due diligence to oversee the Superintendent and District staff.

2. Joan Sias, a parent of a child at the Thornton Creek School and a child at Lowell Elementary School, is deeply involved in the education of her children. She is also a taxpayer and brings this action in her name on behalf of taxpayers generally. She has been particularly concerned with any emphasis upon high stakes testing. She finds Seattle Schools' past widespread use of Broad Foundation direction in the Strategic Plan to be often misguided. She desires her children to have the opportunity to attend fine, well-designed schools, which emphasize development of the whole child. Unfortunately she has found the NWEA/MAP assessment inadequate as a formative assessment tool and as a tool for informing about each student's mastery of grade level content and skills. Ms. Sias sees Superintendent Goodloe-Johnson as a moving force behind many of the Broad Foundation components of the Strategic Plan that she finds unsuitable for improving the education provided to Seattle children. Ms. Sias would like the Board to fully investigate the Superintendent's proposals sent to the Board for approval. She sees the approval of the NWEA/MAP contract as another example of the Board's failure to fully investigate proposals before voting approval

3. Appellants' interests are among those the District was required to consider when it made its decision.
4. A decision in favor of Appellants will redress the harm done to Appellants by the Board's decisions.
5. Appellants have exhausted their administrative remedies to the extent required by law. There are no further administrative appeals for Appellants to exhaust.
6. Respondent District is a public corporation organized under Ch. 28A, RCW.
7. Respondent Board is a body of elected officials charged with administering the laws of the State of Washington relating to common schools as they pertain to the District, and forming and administering the District's policies.
8. Respondent Superintendent is the appointed executive of the District and the Secretary of the Board.

III. JURISDICTION AND VENUE

1. This Court has jurisdiction under RCW 28A.645.010 (Review of School District decisions).
2. Venue is proper in this Court under RCW 4.12.020(2) and RCW 4.12.025(1).

IV. STATEMENT OF FACTS

1. On September 16, 2008, The Northwest Evaluation Association added Dr. Maria Goodloe-Johnson, Superintendent of Seattle Public Schools, to its board of directors (*see attachment 14*).
2. On October 15, 2008, the Board adopted G45.00 for District Procurement

Policy.

3. On July 1, 2009, the Board approved a contract with NWEA for a set quantity of MAP tests for use in the 2009-2010 school year (*see attachments 14 through 15*). The contract does not contain specific contract language providing for renewal or extension of the contract scope or term.
4. On July 16, 2009, the NWEA announces the appointment of Dr. Maria Goodloe-Johnson to the Board of Directors (*see attachment 16*).
5. On May 24, 2010, the Washington State Auditor's Office issued Financial Statements and Federal Single Audit Report No. 1003703. There were numerous findings questioning the District's procurement practices in the area of sole-source contract procurement.
6. On July 6, 2010, the Washington State Auditor's Office issued Accountability Audit Report No. 1003871. A key recommendation was that "Board members improve oversight of District operations. Board members should review the procedures created by the Superintendent and evaluate whether they are effective and appropriate for the District. It is the responsibility of the Board to hold executive management accountable for adherence to District policies." (*see Attachment 17*)
7. On July 7, 2010, the Seattle School Board approved a new contract with NWEA/MAP testing for the 2010-2011 school year, as recommended by Superintendent Dr. Maria Goodloe-Johnson.

Appellants reserve the right to make additional arguments using additional information from the transcript of evidence, which satisfies RCW 28A.645.020, available to the Directors on July 7, 2010. Appellants reserve the right to make additional arguments using additional information that would have been easily available to the Board but may not have been in the transcript of evidence.

V. CLAIMS FOR RELIEF

Cause of Action

(RCW 28A.645)

1. Appellants incorporate by reference Paragraphs 1 through 29 above.
2. Appellants, severally and collectively, are aggrieved by the Board's decision to approve the NWEA/MAP contract for assessment and testing in school year 2010-2011.
3. Appellants, severally and collectively, are aggrieved by the Board's failure to alter its ongoing preference to ignore many critical board policies and by the Board's preference to approve without enough analysis the Superintendent's proposals. These proposals often result from a failure to analyze the full impact on all students prior to the Superintendent's recommendation. The focus of the Board on the presence of a "Sole Source Justification" form rather than the content of the form and Board Action Report was arbitrary and capricious.
4. Appellants allege the Board and District's decision to approve the NWEA/MAP contract will harm students as an adequate effective tool is needed and the NWEA/MAP test is not adequate. Despite the Superintendent's and/or her administration's many violations of laws including various sections of RCW 28A, disregard for policies, failure to adequately research proposals, failure to successfully supervise certain day-to-day operations of the District, and possible violations of Wash. Const. Art. IX, the Board approved the NWEA/MAP contract. This approval was arbitrary and capricious and in violation of law.

VI. REQUEST FOR RELIEF

WHEREFORE, Appellants request the following relief:

1. That the Court order the Respondents to have the Board must review its sole source contract decision, taking into account the intended purposes of the assessment program, and, in view of these purposes, evaluate whether MAP will adequately serve the goals of the assessment.
2. That the Court order the Respondents to have the Board reconsider the contract award using the evidence from the Audit and other sources rather than the Board's narrow policy focus, which neglects many of the functions required of an urban school district's governance board and superintendent.
3. Such other relief as the court may deem just and equitable.

Dated this 5th day of August, 2010.

Respectfully submitted,

By: Appellants

Cecilia Palao-Vargas

Joan Sias,

Verification

We the Appellants, Cecilia Palao-Vargas and Joan Sias, declare as follows:

We have read the foregoing complaint and to the best of our knowledge, information, and belief formed after an inquiry reasonable under the circumstances, believe the complaint: (1) is well grounded in fact; (2) is warranted by existing law; and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. We believe further that the allegations in the complaint are true and correct.

We declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed in Seattle, Washington.

Cecilia Palao-Vargas

date

Joan Sias

date