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SUPERIOR COURT OF WASHINGTON
IN THE COUNTY OF KING

PORTER, ET. AL,)	
)	
Appellants,)	NO. 09-2-21771-8 SEA
)	
v.)	RESPONDENT'S HEARING BRIEF
)	
SEATTLE SCHOOL DISTRICT, NO. 1)	
)	
Respondent.)	
)	

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1 **I. INTRODUCTION**

2 This action is raised pursuant to Revised Code of Washington Chapter 28A.645, a
3 statutory provision that grants a Superior Court appellate subject matter jurisdiction to conduct
4 an administrative review of a decision by a school board or school district official. On May 6,
5 2009, the majority of the Seattle School District No. 1's ("the District") Board of Directors
6 ("School Board") voted to approve the High School Mathematics Adoption Committees and
7 Instructional Materials Committee's recommendation to adopt *Discovering Algebra*, *Discovering*
8 *Geometry*, *Discovering Advanced Algebra*, *PreCalculus with Trigonometry*, and *Calculus* from
9 Key Curriculum Press, and *Statistics: Modeling the World* from Pearson/Addison-Wesley as the
10 District's basic instructional materials for high school math courses.

11 This is not a case about the best way to teach math, or even about the differences between
12 ways to teach math. This case is about whether School Board acted arbitrarily, capriciously, or
13 contrary to law when it approved adoption of these specific instructional materials. The School
14 Board, after a ten-month process, and after the consideration of thousands of pages of documents
15 and the input of hundreds of citizens, made a choice that the Appellants dislike. That is not the
16 proper basis for a legal challenge, particularly when considering the substantial deference that
17 must be afforded to the School Board in making administrative decisions.

18 It would be contrary to both RCW Chapter 28A.645 and the state statute on the adoption
19 of instructional materials, RCW 28A.320.230, to accept Appellants' invitation for the Court to
20 substitute its judgment for that of the School Board, the Superintendent, the District's
21 Instructional Materials Committee, and the Mathematics Adoption Committees. When
22 considering the evidence, only one conclusion can be reached, and that is that the School Board
23 did not act arbitrarily, capriciously, or contrary to law in approving the adoption the specific
24 instructional materials recommended to them by Committees that included experts on math and
25 math education, who are familiar with the needs of the District and its District students. As such,
26 the District respectfully requests that the School Board's May 6, 2009 decision be upheld.
27
28

1 **II. STANDARD OF REVIEW**

2 This action is an appeal raised pursuant to Revised Code of Washington Chapter
3 28A.645, a statutory provision that grants a Superior Court appellate jurisdiction to conduct an
4 administrative review of a decision by a school board. Appellants disagree with the School
5 Board's decisions related to the adoption of some of the basic instructional materials for high
6 school mathematics courses because of their personal beliefs about what pedagogy should be
7 used for math instruction. That disagreement alone does not provide a basis for a challenge to
8 the School Board's decision:
9

10 It is fundamental that no one can have a vested right in any
11 general rule of law or policy of legislation which entitles him to
12 insist that it remain unchanged for his benefit. ... **The general
13 rule is that no one has a vested right to be protected against
14 consequential injuries arising from a proper exercise of rights
by others. This rule is especially applicable to injuries
resulting from the exercise of public powers.**

15 *Citizens Against Mandatory Bussing v. Palmason* 80 Wn.2d 445, 452-53, 495 P.2d 657 (1972)
16 (emphasis added). As was explained over 80 years ago by the Supreme Court of Washington,
17 the judgment of a school board is to be respected by reviewing courts:

18 In a nut shell, **this whole controversy arises over a question of
19 judgment. The petitioners before the board, the appellants
20 here, are not in agreement with the members of the board.
21 That disagreement of itself is not for the courts. The law has
22 plainly vested the board of directors of school districts such
23 as this with discretionary powers in such matters, and the
24 directors having examined into and passed upon the matter in the
25 exercise of their discretion, the courts have no right or power to
26 review the conclusions reached by them as a board in the absence
27 of a showing of abuse of discretion on their part, which is not the
28 case here.**

State ex. rel. Lukens v. Spokane School District, 147 Wn. 467, 474, 266 P. 189 (1928) (emphasis
added). Consequently, the ability to challenge a school board's decisions related to the
administrative matters, such as what instructional materials it will use in its classrooms, is

1 available only through RCW 28A.645.030, a statute that gives substantial deference to the
2 elected School Board and its discretionary decision making power.

3
4 Despite the facial language of RCW 28A.645.030, this Court will **not** be making a de
5 novo review of the School Board's decision to approve the High School Mathematics Adoption
6 Committees and Instructional Materials Committee's recommendation to adopt *Discovering*
7 *Algebra*, *Discovering Geometry*, *Discovering Advanced Algebra*, *PreCalculus with*
8 *Trigonometry*, and *Calculus* from Key Curriculum Press, and *Statistics: Modeling the World*
9 from Pearson/Addison-Wesley as the District's basic instructional materials for high school math
10 courses. True de novo review is only available under RCW 28A.645 for quasi-judicial decisions
11 made by school boards or school officials. *Haynes v. Seattle School Dist. No. 1*, 111 Wn.2d 250,
12 253-54, 758 P.2d 7 (1988), *cert. denied*, 489 U.S. 1015 (1989); *Yaw v. Walla Walla Sch. Dist.*,
13 106 Wn.2d 408, 413, 722 P.2d 803 (1986). Decisions related to the adoption of instructional
14 materials are clearly administrative or policy-making decisions, not quasi-judicial decisions.

15 In reviewing an administrative or policy-making decision of a school board, such as
16 decisions regarding the most effective use of District properties, the Superior Court is to use the
17 traditional administrative review standard of **whether the school board acted in a manner that**
18 **was arbitrary, capricious, or contrary to law.** *Haynes*, 111 Wn.2d at 253-55; *Yaw*, 106 Wn.2d
19 at 413 (citing *Francisco v. Bd. of Dirs. of Bellevue Pub. Schs.*, 85 Wn.2d 575 578-79, 537 P.2d
20 789 (1975)); *see also Coughlin v. Seattle Sch. Dist. 1*, 27 Wn. App. 888, 621 P.2d 183 (1980);
21 *Lane v. Ocosta Sch. Dist. 172*, 13 Wn. App. 697, 537 P.2d 1052 (1975). It is important to note
22 that **"This standard is highly deferential to the administrative fact finder."** *Motley-Motley,*
23 *Inc. v. State*, 127 Wn.App. 62, 72, 110 P.3d 812, 818 (2005) (citing *King County v. Cent. Puget*
24 *Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000)) (emphasis added).

25
26 Thus, in considering this case, the Court must provide substantial deference to the School
27 Board as the administrative fact finder and only overturn the School Board's decision if it was
28 arbitrary, capricious, or contrary to law. As in any administrative review under the arbitrary,

1 capricious, or contrary to law standard, the Court is to make its determination based upon a
2 review of the administrative record considered by the agency. *C.f. Wn. Independent Tel. Ass' v.*
3 *Wn. Util. & Transp. Comm'n*, 110 Wn.App. 498, 518, 41 P.3d 1212 (2002), *aff'n*, 149 Wn.2d 17,
4 65 P.3d 319 (2003). RCW 28A.645 expressly provides only for the submission of “the transcript
5 of the evidence and the papers and exhibits relating to the decision for which a complaint has
6 been filed.” The District timely submitted a Transcript of Evidence comprised of 1,080 pages of
7 documents and six digital video disks. Upon Appellants’ request, and with the agreement of the
8 District, the Transcript of Evidence was supplemented to include 398 additional pages, which
9 were marked as 1,100-1398. The Court is limited to reviewing the Transcript of Evidence, which
10 is cited herein as “TE.”

12 **III. STATEMENT OF FACTS**

14 **A. Identification of the Need to Adopt New Instructional Materials**

15 Prior to the School Board’s May, 6, 2009 decision to approve the recommendation to
16 adopt *Discovering Algebra*, *Discovering Geometry*, *Discovering Advanced Algebra*, *PreCalculus*
17 *with Trigonometry*, and *Calculus* from Key Curriculum Press, and *Statistics: Modeling the World*
18 from Pearson/Addison-Wesley, the last district-wide adoption of basic materials for high school
19 mathematics was in 1992. *TE at 963*. In June 2008, after the arrival of current Superintendent
20 Dr. Maria Goodloe-Johnson, the School Board unanimously approved a 5-year strategic plan
21 created with the input of thousands of community members entitled *Excellence for All*. This
22 strategic plan requires an aligned curriculum and materials for mathematics and science. *Id.*
23 Aligning materials and curriculum with respect to high school mathematics means that all
24 students taking mathematics courses in each of the District’s 12 comprehensive high schools and
25 6 alternative high school programs will be held to the same content standard and outcomes, and
26 that the content and course expectations build from one grade level to another. *Id.*

1 At the time the District began its review of high school mathematics instructional
2 materials, at least five different series of mathematics materials were in use in the District's high
3 schools for core mathematics courses. *TE at 963*. In some cases, more than one set of materials
4 was being used in the same high school, meaning what materials a particular student was
5 learning from could be dependant only upon who his or her teacher was. *Id.* Elementary and
6 middle school mathematics materials had been previously adopted by the District in the last
7 decade, leaving high schools the only element in the District's K-12 continuum without a
8 standard set of materials across and within the District's schools. *Id. at 963 and 13-19*. Given
9 that it had been seventeen years since the last District adoption of basic instructional materials for
10 high school mathematics, the District's high schools were also faced with a shortage of
11 mathematics books, and/or with outdated books that were in poor condition. *Id. at 963*

12
13 **B. The Basic Instructional Materials Adoption Process**

14 Pursuant to RCW 28A.320.230, the state statute on the adoption of instructional
15 materials, the School Board has set a policy "relative to the selection or deletion of instructional
16 materials." That policy is School Board Policy C21.00, which was last revised by the School
17 Board in December 2005. *TE 9-12*. As is required by RCW 28A.320.230, the School Board has
18 appointed an Instructional Materials Committee ("IMC") consisting of "administrators,
19 educators, Curriculum and Instruction Department staff, and parents, and families" to facilitate to
20 review and adoption of basic instructional materials. *Id. at 9*. The role of the Instructional
21 Materials Committee is to approve an adoption schedule, the membership of the subject-area
22 specific Adoption Committee membership, the selection criteria, and the final recommendation
23 to be taken to the School Board. *Id.*

24 For each subject-area specific adoption, an Adoption Coordinator is appointed to
25 facilitate the adoption process, and names are solicited for an Adoption Committee "representing
26 the levels and curriculum area under adoption as well as, when appropriate representation from
27
28

1 paraprofessionals, ELL [English Language Learning], special education, advanced learning,
2 parents, families and community members.” *TE at 10*. The Adoption Committee:

- 3
- 4 a. Develops Selection Criteria, before any materials are reviewed
5 for adoption consideration. The Selection Criteria will satisfy
6 both the State and District requirements of the subject and grade
7 ranges for the adoption and the Criteria for Evaluating Textual
8 Materials for Cultural Relevancy and Anti-bias. Only after the
9 Selection Criteria are approved by the IMC are the publishers’
10 submissions considered and reviewed.
- 11 b. Reviews the materials submitted by publishers for cohesiveness
12 with the Selection Criteria, as stated above.
- 13 c. Solicits feedback from all interested parties. Materials will be
14 displayed, or be made available, in accordance with the
15 established communication strategy.
- 16 d. Reviews responses from administrators, educators, parents,
17 families and community members.
- 18 e. Recommends instructional materials for a District-wide adoption
19 after taking into consideration input from all interested parties.

20 *Id. at 10-11*.

21 After an Adoption Committee has made a recommendation, the Adoption Coordinator
22 submits the recommendation to the Instructional Materials Committee for approval and
23 forwarding to the Superintendent. *TE at 11*. The Superintendent is then charged with taking the
24 recommendation forward to the School Board, making the proposed materials available for
25 School Board review. *Id.* The School Board then determines if it will approve the
26 recommendation or not, and upon School Board approval, the new materials are ordered. *Id.*

27 Under both School Board Policy C23.00 and the state statute governing the adoption of
28 basic instructional materials, the School Board is limited to approving or disapproving the
recommendations put forth through the Instructional Materials Committee. *TE at 11*, RCW
28A.320.230 (“Recommendation of instructional materials shall be by the district’s instructional
materials committee in accordance with district policy. Approval or disapproval shall be by the

1 local school district's board of directors.”). Thus, the School Board cannot reject a
2 recommendation and adopt a different set of materials than what has been recommended to them.

3
4 **C. The Adoption of Basic High School Instructional Materials for Mathematics**

5 The efforts that culminated in the School Board's approval of the recommended adoption
6 of basic instructional materials for high school mathematics spanned over ten months. *See TE 1-*
7 *8.* On October 1, 2008, the School Board was presented with information about the process of
8 pursuing an adoption, and was presented with a proposed adoption timeline. *Id.* 25-30.

9 1. Formation of Mathematics Adoption Committees

10 Mathematics Program Manager AnnaMaria de le Fuentes was appointed to serve as the
11 Adoption Coordinator, and applicants were sought for the Adoption Committee, which was
12 ultimately divided into a Core and Advanced Math groups. *TE 1, 7.*

13 The goal was to develop a committee representing a wide range
14 of skills, knowledge, experience and working style, reflecting
15 diversity in race/ethnicity, gender, school/student population
16 representation, and perspectives. We asked that potential
17 applicants bring an open mind, with passion about student
learning in mathematics, and avoid approaching the process with
a specific textbook or set of materials in mind.

18 *Id. at 3.*

19 The Mathematics Adoption Committees were comprised of mathematics teachers as well
20 as family and community members. *TE at 4.* Staff applications¹ were blind-screened and scored
21 by three instructional services staff members and one central administrator, while
22 family/community applications were blind-screened and scored by parent, family engagement,
23 and instructional services representatives. *Id.* Applicants were ranked based upon average score.
24 *Id.* This District sought to have representation from as many schools as possible, and
25 consequently, placed a limit of no more than two teachers per school on the Core and Advanced
26 Committees. *Id.*

27
28 ¹ The text of the solicitation for staff applications can be found at TE 487-88.

1 Ultimately, the staff selected included representatives from all but one of the 12
2 comprehensive high schools, a representative from an alternative K-8, and representatives from
3 the District's Special Education, English Language Learning, and Advanced Learning
4 Departments. *TE at 4.* Three family/community members were selected,² two for the Core
5 committee and one for the Advanced Math committee. *Id.* The family members chosen all had
6 experience either tutoring, volunteering, or supporting Seattle students, and included an architect,
7 a pre-college program volunteer, and a professor of mathematics and mathematics education.
8 *Id.*³ The composition of the Mathematics Adoption Committees (Core and Advanced) was
9 approved by the District's Instructional Materials Committee on November 25, 2008. *Id. at 1.*

11 2. Notification to Publishers

12 Publishers were notified of the District's intent to pursue a basic instructional materials
13 adoption for mathematics through the newsletter of the regional textbook publishers association,
14 the Washington Oregon Alaska Textbook Representatives Association. *Id. at 6.* Publishers were
15 invited to submit three copies of any instructional materials they want to come under
16 consideration for adoption to the District. *Id.* Publishers outside of this association were also
17 welcome to submit materials for instruction.⁴

18 3. Work of the Mathematics Adoption Committees

19 The Mathematics Adoption Committees met numerous times over the course of the 2008-
20 2009 school year, for a total of 75 hours. *Id. 2, 964.* These meetings were open to the public,
21 with members of the public choosing to observe the meetings on at least three occasions. *Id. at*
22 *964.* The Committees initially reviewed over 20 sets of materials, using criteria approved by the
23 Instructional Materials Committee on January 6, 2009.⁵ *Id. 40, 964.*

24
25
26
27 ² The text of the solicitation for community members and application form can be found at TE 489-90.

28 ³ The names of the Adoption Committee members and their school affiliations can be found at TE 5-6 and TE 542.

⁴ A listing of the materials submitted by publisher can be found at TE 491-93.

⁵ The criteria can be found at TE 477-86.

1 Both an initial and comprehensive criteria were developed, with the initial criteria being
 2 used to screen all of the materials submitted by publishers in order to narrow down to a top three
 3 set of materials, and a longer and more in-depth comprehensive criteria being used to review the
 4 top three choices. *TE . at 7, 477-86.* The criteria were established after review of criteria from
 5 other districts, and included the categories of: Assessment, Cultural Relevance, Content,
 6 Pedagogy, Student Needs, and Teacher Tools and Resources. *Id.*

7
 8 Individual committee members did initial screenings throughout the month of January
 9 2009 and then met in February to identify materials that would undergo comprehensive review.
 10 *TE 42, 964.* As part of their work, the Committees examined the then-newly adopted
 11 Washington State Mathematics Standards, the College Board Advanced Placement Standards,
 12 and the Transition Math Project College Readiness Standards, as well as reviewing the initial
 13 High School Mathematics Materials rankings prepared by the Office of the Superintendent of
 14 Public Instruction for the State of Washington. *Id. at 964, see also TE 48-473.*

15 The School Board was briefed on the progress of the work at its February 11, 2009
 16 meeting, and at a School Board Work session, which were also open to the public. *TE at 37-47,*
 17 *495-450.* Ultimately, the finalists were:

18	19	20	21	22
	Core	PreCalculus	Calculus	Statistics
23	College Preparatory Mathematics	College Preparatory Mathematics	Houghton Mifflin	Key Curriculum Press
24	Key Curriculum Press	Glencoe McGraw Hill	Key Curriculum Press	Pearson/Addison-Wesley
25	Prentice Hall	Key Curriculum Press	Pearson Prentice Hall	
26		Pearson/Addison-Wesley		

27 *Id. 965.* The rationale for removing other materials from other publishers from consideration
 28 included: that materials were not ranked high enough in relation to the new state standards; there was a lack of balance between conceptual understanding, procedural proficiency, problem solving and processes; materials were perceived as less accessible, difficult to read, or lacking

1 clarity or did not align well with Seattle's criteria for Culturally Responsive teaching; materials
2 lacked useful teacher resources or were too dense, with other lighter-weight models provided the
3 same cognitive demand; and that the materials did not provide enough symbolic notation. *Id.*

4
5 During the final discussions of the Adoption Committees, the strengths and challenges of
6 each set of materials was identified and discussed, after the following:

- 7 • Comprehensive review of the finalists by individual committee
8 members, using the Comprehensive Criteria.
- 9 • Public Review (held at the John Stanford Center)
- 10 • Student Review (held at five Seattle high schools, in classes ranging
11 from Integrated Math 1 through BC Calculus). More than 600 students
12 reviewed the materials.
- 13 • Review [of] additional state reports, including the State Board of
14 Education Strategic Teaching report and responses to it.
- 15 • Develop questions for a panel of teachers and/or publishers, based on
16 the public review and the approved criteria.
- 17 • Meet with a panel of teachers currently using the finalist materials,
18 and/or a publisher's representative if a teacher was not available, to ask
19 pre-planned and on-site questions regarding the materials, their use, and
20 results gained.
- Discuss finalist materials and reach consensus. This was generally done,
after much small group and large group discussion, by initiating straw
polls to get a sense of the direction of the group, and then following up
with additional discussion. In one case (Calculus), the final decision
was by vote (8-1), not by consensus.

21 *Id.* 965. Ultimately, the Committees recommended: *Discovering Algebra*, *Discovering*
22 *Geometry*, *Discovering Advanced Algebra*, *PreCalculus with Trigonometry*, and *Calculus* from
23 Key Curriculum Press, and *Statistics: Modeling the World* from Pearson/Addison-Wesley. These
24 recommendations were shared with the general public as part of the Superintendent's March
25 2009 Community Engagement meetings. *See TE 511-516.*

26
27 In passing on their recommendations to the Instructional Materials Committee, the
28 Superintendent, and the School Board, the Mathematics Adoption Committees prepared

1 summaries of their rationale for each of the four recommendations they were making. *TE 542-*

2
3 548. With respect to the adoption of the Core materials, the Committee explained:

4 **Rationale for Recommendation**

- 5 • This series is best for the district as a whole. It presents a balanced
- 6 approach (conceptual understanding, procedural proficiency, problem
- 7 solving and processes).
- 8 • The lessons serve diverse learners: visual, kinesthetic, etc.
- 9 • Advanced learners will not encounter barriers, and struggling learners
- 10 will benefit from the concrete situations.
- 11 • The materials can meet the diverse pedagogical styles of teachers in the
- 12 district. Less teacher dependent.
- 13 • The series meets the needs of a diverse district. Students commented on
- 14 the relevance of the problems and the accompanying pictures. ...
- 15 • The materials align well with CMP2 (middle school materials), but also
- 16 present[] new challenges and opportunities for students who have
- 17 already delved into Algebra in middle school.
- 18 • New concepts are introduced with concrete situations; the lessons move
- 19 student thinking toward abstract representation.
- 20 • For those who want to use more direct instruction, there are condensed
- 21 lessons provided for each lesson, using direct instruction. Teachers,
- 22 tutors, or students could make use of these as needed.
- 23 • Lessons are also available in Spanish.
- 24 • The materials balance creativity exploration, justification, generalization
- 25 and proof.
- 26 • Materials include practical, real-life applications that don't seem made
- 27 for school, but actual problems students could envision themselves
- 28 encountering.
- Reviews are embedded in lessons.
- The program ranked 2nd overall on the initial state standards review.
- The difference between 1st and 2nd was 0.3%.
- Materials provide models for use of data in mathematics.
- Rigorous, not only in mathematics, but in developing communication
- about mathematics, which is part of the standards.
- Answers are provided for the reviews, but hints are provided for the
- new work, which is a strength because it helps students reconnect to
- what they learned.
- o More accessible for ELL students. Pictures and diagrams match
- with problems

27 *TE 543.*

1 The Adoption Committee also identified for the School Board what its concerns
2 were about its recommendations related to Core materials:

3
4 **Concerns about Recommended Materials**

- 5 • Concern about sequencing in moves from conceptual understanding to derivation
- 6 • Desire for theorems and laws to be clearly stated up front
- 7 • Concern about procedural proficiency – extra practice provided
- 8 • Concern about use of calculators – used to support the work and to prevent comp skills from being a barrier, but doesn't mean exclusive use of calculators
- 9 • Concern about use of vocabulary and terminology
- 10 • College Prep Math has a better balance of conceptual understanding, procedural proficiency, problem solving and processes
- 11 • Concern about mathematical rigor
- 12 • Prentice Hall has better procedural proficiency.
- 13 • Key series somewhat prescriptive in the investigations. (scaffolding built in, you don't have to use it)

14 As noted above, several of the advantages presented by the Key series included the
15 resources available to accompany the texts themselves, including mini-lessons and materials in
16 Spanish. This was because:

17 Based on a recommendation from the Instructional Materials
18 Committee, the adoption committee made differentiation for
19 diverse learners a priority in its consideration of materials. The
20 mini-lessons provided by the Key series support the type of
21 explicit instruction recommended above for students with specific
22 learning or other disabilities, the investigations support the
23 recommended opportunity to “think aloud” about problem
24 solving decisions, and the built-in review accommodates
25 struggling students who may have a gap in mathematical content
26 relevant to a concept. These components can also be used to
27 “front-load” lessons for ELL students, or by a tutor working one
28 on one with a student. At the same time, the mini lessons can also
be used to accelerate through a topic for advanced learners who
may bring more prior knowledge, and the investigations can be
used without the built-in reviews to engage advanced learners
more deeply and immediately in complex problem solving.

TE at 1076.

1 With respect to the adoption of the Advanced materials, the Committee explained:
2

3 **Summary of Rationale for Pre-Calculus Recommendation**

4 **Foerster (Key Curriculum Press: *PreCalculus with Trigonometry*)**

5 Benefits

- 6 • Solid content; good explorations. Develops understanding of the code
7 and language of mathematics while a concept is being learned. May be
8 too much trigonometry, but this could be modified. Content-wise
9 Foerster is stronger, builds conceptual understanding and is integral to
10 what students learn. Feel like the “why” is an add-on with the Demana–
11 the teacher would have to provide opportunities to get to the why.
- 12 • Plenty of resources for introducing topics for exploration, rather than
13 being explorations only being used for enrichment or reinforcement.
14 The explorations lead students to discover something; in Demana the
15 explorations are more like practice problems.
- 16 • Group problems made sense – some in Demana just seemed like longer
17 or multi-step problems, but not clear why a group was required.
- 18 • Web-based dynamic explorations (Demana has these also).
- 19 • Teachers can use group work or lecture, but there are enough examples
20 so if students miss class, they can catch up. Set up for a wide range of
21 teacher and student approaches; flexibility for teacher to sometimes
22 teach one way and sometimes another. Piecewise functions introduced
23 early, and seemed much more natural. Typically a difficult topic in
24 PreCalculus.
- 25 • Ancillary materials were very useable and didn’t require a specific type
26 of computer. Electronic resources have to hold up over time. Pdf files
27 and word files will always be readable. Prefer ancillary materials in
28 print form – more convenient and more portable. Good to have both, but
would like to see all of the things teacher needs in book form – easier
than having to log on and be on computer on.
- Each test has a no calculator part. Well designed in terms of what went
into the no calculator piece. Test questions also include complex,
higher-order skills.
- Readability

23 Concerns

- 24 • Black and white printing – not as lively or colorful to read. Demana is
25 better visually.
- 26 • Resource manual is easier to read in Demana (for teachers), Foerster has
27 a smaller font. Students are not going to have those, so it’s more an
28 issue for teachers.
- Overuse of calculator. We (my school) use the calculator approach that
the U uses, scientific only for many tasks. I want them to able to look at

1 a scatter plot and start working with the problem. End up spending a lot
2 of time – it is a plus that they have access, because some of the AP
material requires a calculator.

- 3 • See dissenting opinion for additional concerns.
- 4 • Demana has self-diagnostic sections.
- 5 • Both books introduce radians later than some expected, but it's because
6 they do right triangle trigonometry first. When the committee members
checked the core recommendation (Key), they were satisfied with the
introduction and treatment of radians there.

7 Glencoe – out by consensus; too calculator dependent, too busy. CPM – not considered once not
8 chosen by Core Committee, due to strong need for CPM Adv Algebra in order to align with CPM
PreCalculus.

9 Decision reached by consensus; informed by votes:

- 10 • Which text do you prefer that the district adopt? (Foerster 7, Demana 2)
- 11 • Which text can you and the district as a whole work with? (Foerster 9,
12 Demana 8)

12 **Summary of Rationale for Calculus Recommendation**

13 **Foerster (Key Curriculum Press: *Calculus*)**

14 Benefits

- 15 • Both Finney and Foerster could be used for AB or BC Calculus; Larson
16 requires the larger book.
- 17 • Book works fine in a lecture mode or[] exploratory method of teaching.
18 Some of the explorations just turn out to be the examples, just set up
19 either exploratory or more step by step. You could decide. Accomodates
20 broad range of teaching and learning styles.
- 21 • Connection from PreCalculus to Calculus.
- 22 • Larson is written more like a college textbook – different stage of
23 intellectual development; Finney is more for a high school audience;
24 Foerster – I've taught AB Calcu and BC Calc – found it to very
25 satisfactory as far as materials, very good results on both tests, good
26 feedback from students about learning.
- 27 • Coverage of topics such as limit of $\sin x$ over x more in depth.
- 28 • Fundamental Theorem comes right after Mean Value Theorem, which is
used to prove the Fundamental Theorem. More dramatic and student-
centered than the way I was taught.
- One committee member taught AP, he switched to Foerster and his rate
went up. Another member had a similar comment.
- Good post BC test topics: inertia, moments of mass
- Better teacher guide – focuses on what's important in each lesson.
- Mathematically rigorous.

29 Concerns

- 1 • Larson more in-depth mathematically; after the AP test, good to add
- 2 some things that are not on the test.
- 3 • Order is not in the order I teach, so it's based on a reform philosophy –
- 4 see p. 29 of instructor's manual.
- 5 • "Calculus Journal" not something I want to use
- 6 • Foerster – overload on calculator – graph sine and cosine, see one is the
- 7 derivative of the other – definite and indefinite integrals before max min
- 8 concavity, before they deal with derivatives.
- 9 • Discussion about order – Foerster introduces integrals very early;
- 10 response was that you could choose to skip that lesson, no make or
- 11 break, but some members liked the students seeing the two big ideas of
- 12 calculus early to build up to the Fundamental Theorem of Calculus.
- 13 • However, college math is broken out by quarters, so differential and
- 14 integral calculus are separate..
- 15 • Concern about projects, not necessary for Calculus students.
- 16 • One member already has great results in his AP class (AP test pass rate)
- 17 – why be forced to switch texts?
- 18 • Concern about formal definition of limit in Foerster. Concern about
- 19 mathematical rigor.

20 Decision reached by vote, after a series of straw polls and attempt to reach consensus:

- 21 • Preference: (Foerster 8, Larson 1, Finney 0)
- 22 • Can work with: Foerster 8, Finney 5, Larson 5)
- 23 • Vote: I am in favor of making Foerster the recommendation of this
- 24 committee: 8 – 1.

25 Dissenter moved that we recommend two Calculus texts; motion not seconded.

26 **Summary of Rationale for Statistics Recommendation**

27 **Bock (Pearson/Addison-Wesley: *Statistics: Modeling the World*)**

28 Benefits

- 1 • Investigative tasks have rubrics
- 2 • Good teacher resources – test banks, quizzes
- 3 • Good student resources – readable, highlighted text, “just checking”
- 4 questions, index, glossary
- 5 • Includes habits of mind – “think, show, tell”
- 6 • Clear examples
- 7 • Good for interpretation of hypothesis testing
- 8 • AP test prep book; online resources, guidance for AP review
- 9 • Notes on common errors
- 10 • Plenty of open-ended questions for AP prep
- 11 • Good applications
- 12 • Uses real data and realistic problems
- 13 • Good investigative tasks
- 14 • Great visual for Type I/Type II error (pp. 494-96)

- Solid statistical approach.

Concerns

- None.

Decision reached by consensus.

TE at 545-48.

4. School Board Consideration of Recommended Adoption

The recommendation to approve the adoption of *Discovering Algebra*, *Discovering Geometry*, *Discovering Advanced Algebra*, *PreCalculus with Trigonometry*, and *Calculus* from Key Curriculum Press, and *Statistics: Modeling the World* from Pearson/Addison-Wesley as the District's basic instructional materials for high school mathematics was introduced before the School Board at its April 8, 2009 regular legislative session. *TE 517-548*. As was explained at a subsequent School Board meeting on April 22, 2009, instructional materials is one element to providing quality math instruction, and that as a whole, the District was seeking to have:

- Common Instructional Materials that are well-aligned with the new State Standards for Mathematics
- Professional Learning and Support for Teachers, Administrators, and Support Staff
- Family/Community Engagement, Support and Involvement
- Accountability: Assessments and Indicators
- Direct Student Support: Intervention and Acceleration; Team Math
- District-wide College Readiness Focus
- Effective Teacher Recruitment and Retention through Strategic Partnerships with University Pre-Service Programs

TE 949. This theory of action was in line with the new Washington State Standards for Mathematics, which set forth that: "An effective mathematics program balances three important components of mathematics – conceptual understanding, procedural proficiency, and problem solving and mathematical processes." *TE 30, 1081* (recording of October 1, 2009 School Board Meeting).

The Adoption Coordinator Ms. de la Fuentes, provided to the School Board Directors a hundred-page Notebook of Materials⁶ related to the process used in formulating the recommendations, and which contained:

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⁶ This Notebook of Materials (including the materials referenced by link within the Table of Contents) can be found at TE 553-942.

1 As is evidenced by the content of the Notebook, the School Board was presented with
2 information from sources that both supported the proposed adoption, and those that did not. *TE*
3 *553-942*.

4
5 The School Board heard from Ms. de la Fuentes, members of the Adoption Committees,
6 and members of the public regarding the recommendations on April 8, 2009, April 22, 2009 and
7 May 6, 2009. *See TE 943-1080*. Ms. de la Fuentes, an Instructional Coach, and members of the
8 Adoption Committee presented information to the School Board, including demonstrating
9 sample lessons. They also explained that “textbooks are a tool, and are just one component of
10 classroom instruction. It’s the overall instruction in the classroom that impacts student learning,
11 not just the textbook.” *TE 1084-86*. John Boyd, the Principal of Chief Sealth High School,
12 testified that all 19 of the District’s then-sitting high school Principals and Program Managers
13 were in favor of the adoption. *See TE 517, 1084*.

14 During all three of the School Board meetings where the recommendations were
15 discussed, various Directors engaged Ms. de la Fuentes and the members of the Adoption
16 Committees in lengthy questioning. *TE 1084-86*. The School Board’s questions were directed
17 primarily at the recommendations by the Core Mathematics Adoption Committee, even though as
18 indicated in the summaries, the selection of materials in the Core area was considered in
19 determining what Advanced materials would be recommended. *See TE 546*.

20 The School Board was advised that the recommendation of the Key series was based on
21 the following rationale:

- 22 • This series is **best for the district as a whole**, based on content and
23 criteria.
- 24 • It presents a **balanced approach** (conceptual understanding, procedural
25 proficiency, problem solving and processes). The committee viewed the
26 series as **in the middle along the continuum of approaches** presented
27 among the materials.
- 28 • The program’s **content ranked 2nd overall on the initial state
standards review**, based on its alignment with the new state standards
and other criteria.

- 1 • The lessons serve **diverse learners**: visual, kinesthetic, etc.
- 2 • **Advanced learners** will not encounter barriers, and **struggling learners** will benefit from the concrete situations.
- 3 • The materials can meet the **diverse pedagogical styles of teachers** in the district, and are **less teacher dependent**.
- 4 • The series **meets the needs of a diverse district**. Students commented on the **relevance** of the problems and the accompanying pictures.
- 5 • The materials **align** well with our middle school materials, but also presents **new challenges** and opportunities for advanced students.
- 6 • **New concepts are introduced with concrete situations; the lessons move student thinking toward abstract representation.**
- 7 • For those who want to use more **direct instruction**, there are condensed lessons provided for each lesson, using direct instruction. **Teachers, tutors, and students** can make use of these. **The guide for parents and tutors** provides very clear step by step processes.
- 8 • The materials balance **exploration, justification, generalization and proof**.
- 9 • Materials include **practical, real-life applications**.
- 10 • **Reviews are embedded in lessons**.
- 11 • Materials provide **models for use of data** in mathematics.
- 12 • More **accessible for ELL students**. Pictures and diagrams match with problems.

13 *TE 953-54* (emphasis in original).

14 The School Board was informed that in the Core materials Adoption Committee believed:
15
16 “Key series best represented such a balanced approach, and therefore would best support student
17 learning based on the new [Washington State] standards.” *TE 1072*. The Key series was initially
18 ranked as second in a review of what materials were aligned with the new Washington State
19 Standards by the Office of the Superintendent for Public Instruction for the State of Washington
20 (“OSPI”). *TE 598-607*. Ms. de la Fuetnes reported that OSPI’s Mathematical Analysis of Top-
21 Ranked Programs by Drs. George Bright and James King supported the use of the Discovering
22 series, because:
23

24 In general, the “Discovering” series strikes a very good balance
25 between teaching general concepts/skills (e.g., transformations of
26 functions) and specific concepts/skills related to quadratic
27 functions (e.g., equation of the line of symmetry of a parabola).
28 The mathematics is developed coherently (and soundly). By the

1 end of the Advanced Algebra course, students should be quite
2 ready to move on to pre-calculus.

3 Ms. de la Fuentes also addressed that there was a second OSPI report that took issue with
4 the mathematical soundness of every book ranked favorably in the initial report and advised use
5 of just a single text, by Holt. She explained that function among OSPI reviewers indicates that
6 this is a very debated area, and that there is no one single answer for any district. She provided to
7 the School Board data from the Madison Wisconsin School District, a district of roughly similar
8 size, regarding the outcomes that district was seeing after adopting the Key series. *Id.* 541-43

9 The School Board was also advised of a 2008 National Math Panel Report, and how the
10 recommended adoption was inline with recommendations from that Report. *Id.* 1076-77. The
11 School Board was also advised that:

12 As was explained:

13 Aligning math materials is a first, but necessary step in ensuring
14 that every student in Seattle Schools has the opportunity for a
15 quality mathematics education that prepares him/her for college
16 and for work. This will set the stage for aligned professional
17 learning for teachers, administrators, and support staff, common
18 assessments, and examination of student work and achievement
19 data to improve instruction. Direct student support and
20 intervention, particularly before and during the critical ninth
21 grade year, through tutoring, acceleration programs, family
22 engagement, and college readiness programs will also be key to
23 developing the type of mathematics learning required by our
24 strategic plan, future workforce requirements, and a commitment
25 that a strong mathematics education is the right of every student
26 in our district.

27 *TE at 1075.*

28 Ultimately, after significant debate and discussion over the course of three meetings, the
School Board voted 4-3 to approve the recommendation to adopt *Discovering Algebra*,
Discovering Geometry, *Discovering Advanced Algebra*, *PreCalculus with Trigonometry*, and
Calculus from Key Curriculum Press, and *Statistics: Modeling the World* from Pearson/Addison-

1 Wesley at its May 6, 2009 meeting *TE 1079*. Immediately following the School Board's May 6,
2 2009 approval, the District ordered the approved materials. *Id. 1067*. All high school staff who
3 teach mathematics have been provided with professional development on the use of the
4 materials, and all of the materials are now being used in all of the District's high schools, and
5 some of its middle schools. *Id.* It cost the District approximately \$1.2 million to purchase these
6 materials and provide this professional development. *Id. at 1077*. As school districts are
7 provided funding to adopt instructional materials on an 18-year cycle,⁷ and the District is facing
8 a potential budget shortfall of around 49 million dollars, it is unlikely that the District will be in a
9 position to fund another basic instructional materials adoption related to high school mathematics
10 for many years.⁸

12 IV. POINTS AND AUTHORITIES

13 Appellants spend the majority of their brief making claims regarding what they see as the
14 dire outcome of the use of "inquiry-based math." However, as explained above, "an effective
15 mathematics program balances three important components of mathematics – conceptual
16 understanding, procedural proficiency, and problem solving and mathematical processes." *TE*
17 *30, 1081* (recording of October 1, 2009 School Board Meeting). In adopting the Key series, the
18 Adoption Committee and outside reviewers described the series not as a radical reform text, but
19

20 ⁷ Washington State funds materials adoptions through a general fund called NERCs (Non Employee Related
21 Costs). The adoption line item in NERC runs to about an 18-year adoption cycle. See
http://fundingwaschools.org/BEFWAL/OSPI_K12_Finance_Outlook_BEF_6_Key_Recs_2008Oct08.pp

22 ⁸ An open question before this Court is if this case is moot, as the Court can no longer provide the original or
23 effective relief given that the use of materials at issue has already been fully implemented. *In re Cross*, 99 Wn.2d
24 373, 376-77, 662 P.2d 828, 831 (1983). In *Willett v. Russell*, 133 Wn. 88, 233 P. 292 (1925), a plaintiff sought an
25 injunction to restrain Seattle officials from proceeding with construction of a power substation. Much like in this
26 case, the plaintiff in *Willett* claimed that the city officials failed to follow procedure as dictated by statute. By the
27 time the plaintiff's case reached the Washington Supreme Court, construction of the substation was completed, as
28 there had been no restraining order or temporary injunction issued by the lower court. The Supreme Court of
Washington held that "[m]anifestly, therefore, there is now nothing to enjoin, and the controversy for all practical
purposes has ceased to exist....[s]hould we proceed to dispose of the cause upon the merits, it is now manifest that
we would be but deciding a moot question." *Id.* at 89. In the present case, similar to *Willett*, unconstrained by any
temporary restraining order or preliminary injunction, the District implemented the decision at issue. Consequently,
as in *Willett*, "there is now nothing to enjoin," and any review of this now moot case would be inappropriate, as it is
a purely academic venture.

1 instead as presenting “a balanced approach (conceptual understanding, procedural proficiency,
2 problem solving and processes) ... in the middle along the continuum of approaches presented
3 among the materials,” and “a very good balance between teaching general concepts/skills (e.g.,
4 transformations of functions) and specific concepts/skills related to quadratic functions (e.g.,
5 equation of the line of symmetry of a parabola).”
6

7 Appellants mistakenly frame this case as a debate between what they see as two
8 approaches to teaching math. That is **not** the issue before this Court. The only issue before this
9 Court is if the adoption of the *Discovering Algebra*, *Discovering Geometry*, *Discovering*
10 *Advanced Algebra*, *PreCalculus with Trigonometry*, and *Calculus* from Key Curriculum Press,
11 and *Statistics: Modeling the World* from Pearson/Addison-Wesley as the District’s basic
12 instructional materials for high school math courses is arbitrary, capricious, or contrary to law. It
13 was not.

14 A. Appellants Failed to Timely Challenge Composition of the Adoption Committees or
15 the Criteria Adopted by the Instructional Materials Committee

16 The Math instructors, Special Educators, Advanced Learning Educators, and English
17 Languages Learning Educators and family members who served on the Adoption Committees
18 were qualified for to do so, and truly are the experts on the needs of students in the District. The
19 criteria used by the Adoption Committee were set by the IMC, as is required by law and policy,
20 in consideration of both the specific needs of the District and the criteria used by other Districts.
21 Neither the composition of the Adoption Committees nor the criteria used were arbitrary,
22 capricious, or contrary to law. However, it is apparent that Appellants are now taking issue with
23 the composition of the Adoption Committee and the criteria is used; but they did not timely raise
24 a challenge to these decisions. As such, this Court does not have subject matter jurisdiction to
25 review those decision under RCW Chapter 28A.645. RCW 28A.645.010 imposes a strict 30-day
26 statute of limitation that provides in part:
27
28

1 Any person . . . aggrieved by any decision or order of any school
2 official or board, **within thirty days after the rendition of such**
3 **decision or order**, or of the failure to act upon the same when
4 properly presented, may appeal the same to the superior court . . .
5 by filing with the secretary of the school board if the appeal is
6 from board action or failure to act, otherwise with the proper
school official, and filing with the clerk of the superior court, a
notice of appeal which shall sets forth in a clear and concise
manner the errors complained of.

7 (emphasis added). Thus, the statute requires appellants to file a notice of appeal with both the
8 clerk of the court and the proper district official within 30 days of a decision that they are seeking
9 to challenge. *Id.*

10 Washington courts have long concluded that the Superior Court's jurisdiction under
11 RCW 28A.645 is strictly appellate in nature, and as such, it imposes the duty on courts to apply
12 all pertinent statutes from which appellate jurisdiction is derived, including the 30-day limitation
13 period. *Clark v. Selah Sch. Dist.*, 53 Wn. App. 832, 836, 770 P.2d 1062 (1989). **"The**
14 **overwhelming weight of authority is to the effect that jurisdiction is conferred upon the**
15 **appellate court only in the manner provided by statute or court rule, and where there is a**
16 **failure to comply with the rule providing for perfecting of an appeal, no jurisdiction is**
17 **conferred."** *Id.* at 837 (internal citation omitted, emphasis added)

18
19 Courts have consistently held that a would-be appellant's failure to adhere to RCW
20 28A.645.010's strict limitation period requires dismissal. As emphasized by the Supreme Court
21 of Washington: **"the clear 30-day statutory limitation imposed by the State Legislature . . .**
22 **on the time within which an appeal must be taken from a school board decision means**
23 **what it says, and appeals taken after that time limit has expired are not timely."** *Haynes v.*
24 *Seattle Sch. Dist. No. 1*, 111 Wn.2d 250, 251, 758 P.2d 7 (1988) (construing predecessor statute)⁹
25 (emphasis added). Consequently, appeals under RCW 28A.645.010 are routinely dismissed if

26
27 ⁹ RCW 28A.645.010 is a fairly recent recodification of a predecessor statute, RCW 28A.88.010, which was
28 identical in all respects. Laws of 1990, ch. 33, sec. 4; *Derrey v. Toppenish Sch. Dist.*, 69 Wn. App. 610, 611 n.1,
849 P.2d 699 (1993).

1 the appellant fails to meet the 30-day limitation period. *See e.g. id.* at 256; *Derrey v. Toppenish*
2 *Sch. Dis.*, 69 Wn. App. 610, 849 P.2d 699 (1993); *Schmidtke v. Tacoma Sch. Dist.* No. 10, 69
3 Wn. App. 174, 848 P.2d 203 (1993); *Benson v. Roberts*, Wn. App. 362, 666 P.2d 947 (1983).

4 The appointment of the Adoption Committee Members occurred on November 25, 2008
5 with applicants being advised of their acceptance or denial on November 26, 2008. *TE 1-2*, 558.
6 The Instructional Materials Committee's set selection criteria on January 6, 2009. *TE 1-2*, 558.
7 That both of these events occurred was posted on the District's Website. *TE 1-2*. Appellants
8 Notice of Appeal was filed on June 5, 2009, **over six months after** the appointment of the
9 Adoption Committee Members, and **four months after** the setting of the selection criteria.
10 Thus, Appellants' initial failure to meet the 30-day statute of limitation period divested this Court
11 of any subject matter jurisdiction to hear challenges regarding the composition of the Adoption
12 Committee or the selection criteria.

14 B. The School Board's Approval of the Recommendations was Not Arbitrary, Capricious
15 or Contrary to Law

16 When stripped away from the hyperbole regarding "Math Wars," the Court is left with a
17 far more basic question, which is did the School Board violate any law or policy when making its
18 decision, and was it arbitrary or capricious. The answer is that the School Board did not.

19 As set forth above, the School Board has adopted a Policy related to the adoption of basic
20 instructional materials, School Board Policy C23.00. *TE 9-12*. That Policy contains all of the
21 elements required under RCW 28A.320.230, the state statute related to the adoption of
22 instructional materials. *Id.* As is set forth in RCW 28A.320.230: "Recommendation of
23 instructional materials shall be by the district's instructional materials committee in accordance
24 with district policy. Approval or disapproval shall be by the local school district's board of
25 directors." Appellants make no challenge to the District's compliance with RCW 28A.320.230,
26 but instead claim a potential constitutional violation based upon claims about inquiry-based
27 instruction using *other* instructional materials than those adopted by the School Board, which
28

1 again were considered to be a balanced approach to teaching conceptual understanding,
2 procedural proficiency, problem solving and processes. Large portions' of Appellants brief are
3 simply irrelevant, as they are generalized speculation about potential outcomes and do not
4 actually present an alleged violation of law by the adoption of the particular materials at hand.
5

6 What is then left is a question of if the decision was arbitrary or capricious. As evidenced
7 by the Transcript of Evidence, and the multiple meetings at which the School Board considered
8 the issue, it was not. The Adoption Committees met for over 75 hours to consider which
9 materials would be serve the students of the District, the students that these math, special
10 education, ELL and advanced learning teachers and family members work with every day. They
11 considered many options, an ultimately choose the ones that they believed best met the needs of
12 the District, and would assist in the goal to have an effective mathematics program that balanced
13 conceptual understanding, procedural proficiency, and problem solving and mathematical
14 processes. They provided the School Board with the rationale for each recommendation they
15 made. As set forth above, the School Board was presented with viewpoints on both sides of the
16 issue, and including reports in favor and critical of the recommendations. *TE 553-942*. Contrary
17 to Appellants' claims, Ms. de la Fuentes did discuss with the School Board both sets of OSPI
18 findings. *TE 955, 1084-86*. The School Board was provided data from another school district
19 that is has success using the Key series, and heard that the San Diego School District chose to
20 change what math textbooks it was using to something other than Key.¹⁰
21

22 Ultimately, what Court is faced with is a simple disagreement with the Adoption
23 Committees' recommendations. Again, disagreement is not a basis for a successful challenge to
24 a school board's exercise of its discretionary decision making power. *Palmason* 80 Wn.2d at
25 452-53; *Lukens*, 147 Wn. at 474. Ultimately, the School Board – the elected officials charged
26

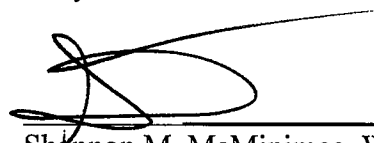
27 ¹⁰ One School Board Director did go through a lesson with her own child. That does not make the decision
28 arbitrary or capricious, but instead reflects a Director who also is a Parent and who wanted to satisfy her concerns
that the materials chosen were ones that she believed were parent-friendly.

1 with making policy determinations for the District - decided to approve recommendations
2 presented to them by a panel of educators, family members, and professionals. *TE at 2277-78.*
3
4 There was nothing about these decisions that was arbitrary or capricious, rather they were
5 thoughtful decisions involving hundreds of hours of work by the Instructional Materials
6 Committee, the Adoption Committees, School Board, the Superintendent, and District staff. The
7 decision was one that needed to be made in light of the need to align the District's mathematics
8 curriculum and in the face of having insufficient, inconsistent, and in some cases seventeen-year-
9 old materials.

10 **V. CONCLUSION**

11 The District respectfully submits that the School Board's May 6, 2009 decision to
12 approve the adoption of *Discovering Algebra*, *Discovering Geometry*, *Discovering Advanced*
13 *Algebra*, *PreCalculus with Trigonometry*, and *Calculus* from Key Curriculum Press, and
14 *Statistics: Modeling the World* from Pearson/Addison-Wesley as the District's basic instructional
15 materials for high school math courses was not arbitrary, capricious, or contrary to law, and
16 consequently, the Court should uphold the School Board's decisions.

17
18 RESPECTFULLY SUBMITTED this 16th day of December 2009.

19
20 

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