

Policy & Legal News

HELPING SCHOOL DISTRICTS TRANSLATE LAW INTO ACTION




WSSDA

DECEMBER 2017

WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION

As we bid farewell to 2017, we're excited to bring you three articles by guest contributors on policy

topics that are particularly timely for districts: digital citizenship, paid sick leave, and benefiting from audits. Although these topics are distinct, the three articles share an important aspect – each article is important for you before we welcome a new year.



Our first guest article is about digital citizenship. Digital citizenship is a concept that includes the norms of appropriate, responsible, and healthy behavior related to current technology use. In this issue, you'll find a guest article by WSSDA policy consultant Charles Leitch about the requirement to review your district policy regarding electronic resources and internet safety, and the considerations you should include in your review. Mr. Leitch is a founding principal of Patterson Buchanan Fobes & Leitch, Inc., P.S. in Seattle. He is a regular advisor and trainer on technology/social media issues in school districts. In his article, Mr. Leitch helps districts understand WSSDA's new policy for Digital Citizenship and Media Literacy and why this issue needs your close attention.

Our second guest article is about paid sick leave. Please note that legislation requiring paid sick leave will be in effect on January 1, 2018. This second guest article is by WSSDA policy consultant Anthony (Tony) Anselmo. Mr. Anselmo has over 15 years' experience in education law and advising public school districts on a wide range of legal issues, including negotiating contracts on behalf of public school districts. In his article, Mr. Anselmo helps navigate the tricky timing of this revised policy. Please note that the rulemaking associated with the new legislation is still underway, and we hope that rulemaking might eventually clarify the scope of the requirements.

Our third guest article, is by WSSDA's own Business and Operations Officer, Josh Collette who worked at the State Auditor's Office as a local government auditor before joining WSSDA. His article provides a year-end summary of the findings for school districts from the State Auditor's Office along with some insight and analysis. Although this feature is a wrap-up of 2017, Mr. Collette's insights on gaining the greatest benefit from the audit experience it is just what you need to prepare for 2018 (hint: learn from others' mistakes).

Finally, I'd like to thank everyone who attend WSSDA's Law Conference in Bellevue. Your energy and interest added to an amazing day of presentations regarding the legal information school directors need now.

Wishing you all the best and a joyous holiday season,
Abigail Westbrook, J.D.,
Editor





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★ POLICY REVISIONS

The following WSSDA model policies have been revised. For your convenience, updated marked-up documents are included with this issue of *Policy & Legal News*.

NEW

CLASSIFICATION: PRIORITY

- **Policy 2023, Digital Citizenship and Media Literacy**
- **Form 2023, Digital Citizenship, Media Literacy, Electronic Resources, and Internet Safety**

UPDATES

CLASSIFICATION: PRIORITY

- **Procedure 2022, Electronic Resources and Internet Safety**
- **Procedure 2110, Transitional Bilingual Instruction Program**

CLASSIFICATION: ESSENTIAL

- **Policy and Procedure 5401, Sick Leave**

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- **5000 Series**

As stated in WSSDA Policy 1310, "Non-substantive editorial revisions and changes in administrative, legal and/or cross references need not be approved by the board."



NEW MODEL POLICY AND FORM 2023, DIGITAL CITIZENSHIP AND MEDIA LITERACY; MODEL PROCEDURE 2022P, ELECTRONIC RESOURCES AND INTERNET SAFETY

New State-Mandated Policy Updates Reflect Growing Importance of Digital Citizenship and Media Literacy

By Charles Leitch, Esq., guest contributor



Introduction

Federal law, including the Children's Internet Protection Act (CIPA), provides requirements for schools with respect to internet safety for students. Schools must have an internet safety policy in place that protects students from harmful materials and educates students about appropriate online behavior, including interacting with other individuals on social networking websites. CIPA also generally requires school policies to address cyberbullying awareness and response.

However, the ways in which Washington school districts implement these requirements vary significantly. Some districts have extensive policies and procedures that seem to address every possible concern related to student and staff technology use. Others take a broader position and comply with the law while being less nuanced.

Districts also vary in the ways in which internet safety and online behavior are framed. The "tone" of policies range from solely focusing on the prevention of negative behaviors (e.g. cyberbullying or cheating) to addressing more generally responsible use of electronic resources. The diversity of communities and school districts throughout the state reflect these varying approaches and render the development of a single, uniform policy for the entire state impractical.

However, as technology continues to integrate into virtually every aspect of a student's life, the line between digital citizenship and citizenship in general has blurred. As such, the Washington state Legislature has deemed it necessary for schools to develop a policy that proactively addresses the importance of citizenship and media literacy in the digital landscape.

Legislative Background

In the summer of 2016, the Legislature passed a bill recognizing that with the ever-increasing prevalence of technology in and outside of the classroom, students must learn how to use that technology in ways that are safe, ethical, responsible, and effective. To that end, the Legislature defined digital citizenship as including the norms of appropriate, responsible, and healthy behavior related to current technology use, including digital and media literacy, ethics, etiquette, and security.

[Substitute Senate Bill \(SSB\) 6273](#) directed the Office of Superintendent of Public Instruction to convene and consult with an advisory committee to develop best practices and instruction in digital citizenship. Further, the bill required that Washington school districts annually review their policies and procedures on electronic resources and internet safety. See WSSDA model policy 2022 and 2022P.

In early 2017, the Legislature passed [Senate Bill 5449](#) and directed WSSDA to review its model policy and procedure on electronic resources and internet safety. The bill also directed WSSDA to develop a checklist of items for school districts to consider when updating their related policy and procedures.

Digital Citizenship Advisory Committee

OSPI's Digital Citizenship Advisory Committee, which included leaders in education, technology, and law, convened three times in 2016 to develop best practices and instructional recommendations. Additionally, OSPI formed virtual workgroups including Advisory Committee members as well as thirty other educators and community members who contributed ideas and resources, discussed important perspectives regarding digital citizenship, as well as successful practices in their districts.

The product of the Advisory Committee's work was a report to the Legislature with recommendations regarding digital citizenship and media literacy. Not only did the report provide expanded definitions

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of these terms, it presented current successful practices in districts and summarized elements of successful district implementation of digital citizenship and media literacy. Many of the Advisory Committee's recommendations have been instrumental in the development of WSSDA's model policy and checklist on digital citizenship and media literacy.

Digital Citizenship Summit

To build on the foundation set by the Advisory Committee, WSSDA hosted the Washington Digital Citizenship Summit on November 1, 2017. Educational and legal professionals from several Washington school districts and organizations convened to discuss best practices and to collaborate further on the development of a model policy and checklist to aid districts in their annual review of procedures. The Summit presented an opportunity to discuss a draft of the model policy, parameters for a checklist, as well as deployments in districts impacting scalability of the current Electronic Resources policy and any new policy on technology to each district. It became very clear early on that a one-size-fits-all approach would not work with the new model policy or the checklist for every district, just as with the Electronic Resources materials already available from WSSDA. Summit participants agreed that individual district considerations would ultimately control how these materials are adopted or utilized.

Model Policy and Checklist

The model policy expresses a commitment to promote and instill in students principles of appropriate, responsible, and healthy use of technology. The policy also encompasses elements of successful implementation, which include professional development for teachers and staff; dynamic electronic resources, policies, and practices; community engagement; and student instruction across a district's curriculum.

To further aid districts in implementing the goals of the policy, the model checklist contains sets of questions that districts may consider when annually reviewing their digital citizenship, electronic resources, and internet safety policies and procedures. The checklist is a flexible resource intended to encourage critical conversations within districts related to areas of technology use, which impact everything from accessibility of electronic resources to social media, student privacy, ethics, and more. The questions presented in the checklist are organized into two general sections ("Electronic Resources and Internet Safety" and "Digital Citizenship and Media Literacy"), although some questions may pertain to both sections. While not every question on the model checklist will apply to each district, they may serve to guide the conversations that districts have in the development and revision of their policies. The checklist questions are by no means exhaustive or intended to limit a district's specific considerations.

It is important to note that adoption of the model digital citizenship and media literacy policy and checklist is not strictly required by statute.



However, under RCW 28A.650.045, school districts are now required to review their policy and procedures on Electronic Resources and Internet Safety annually. To further aid districts in this review, WSSDA has revised its model resources, and the most significant changes are described in the following section.

Electronic Resources and Internet Safety Update

In accordance with its legislative mandate and to further assist districts in their annual review, WSSDA has updated Model Procedure 2022P on Electronic Resources and Internet Safety. The revised procedure reflects the Legislature's updated definition of digital citizenship and addresses several common issues that have arisen across the state since the procedure was last revised. For example, with respect to internet safety, the revised procedure notes that students should be aware of their "digital footprint" and the persistence of their digital information. The revised procedure also addresses student privacy while using district networks, and provides that a district may monitor student use of a district network, including when accessed on a student's personal electronic device or a device issued by a district.

Additionally, with the growing use of electronic educational applications and programs in the classroom, the revised procedure includes guidelines for district staff to follow when requesting students download or sign up for such programs on their electronic devices. These new guidelines are intended to further protect students' privacy and online safety, and to safeguard districts from related potential legal liability.

Finally, the updated procedure has been revised to include a section on accessibility of electronic resources. In the past year, there has been a rise in administrative complaints related to limitations of

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accessibility on district websites, for example, by individuals with disabilities. To address this growing trend, the procedure now states that district staff with authority to create or modify website content or functionality associated with a district will take reasonable measures to ensure that it is accessible to people with disabilities.

Conclusion

WSSDA’s development and promulgation of these resources presents an exciting opportunity for districts to formulate their positions on digital citizenship in general, and to also analyze, revise, and develop the ways in which digital citizenship and media literacy are implemented, including in districts’ revision of their Electronic Resources and Internet Safety procedures.

While no two district policies or set of procedures may look exactly alike, the WSSDA models can serve as a comprehensive foundation for following new legislative mandates and for demonstrating districts’ commitments to educating students on responsible, safe, and effective use of electronic resources.

Charles P.E. Leitch is an attorney and Founding Principal of Patterson Buchanan Fobes & Leitch, Inc., P.S. Mr. Leitch serves as counsel to many Washington school districts on technology matters and related student and staff use. In addition to his litigation practice, Mr. Leitch routinely conducts trainings on supervisory challenges of technology, bullying and cyberbullying response, and privacy issues relating to student and staff use of technology. He has served as a member of the Washington State Attorney General’s Youth Internet Safety Taskforce, an Advisory Board member of the Internet Keep Safe Coalition in Washington D.C., and an invited blogger for Yahoo Safety. He is a member of WSSDA’s Policy Consulting Cadre.

Other Updates

WSSDA has revised PROCEDURE 2110 – TRANSITIONAL BILINGUAL INSTRUCTION PROGRAM to reflect recent legislation.

The above procedure has been updated to be consistent with the Every Student Succeeds Act (ESSA) regarding English Learner (EL) programs and Washington state’s English Language Proficiency (ELP) assessment. Edits include changes to parent/guardian notification, annual assessments, and program communication.



MODEL POLICY 5401, SICK LEAVE

Washington State's New Paid Sick Leave Law



By Anthony Anselmo, guest contributor

Last year, Washington voters approved Initiative 1433, which, among other things, requires employers, including school districts, to provide nonexempt employees paid sick leave. The sections of Initiative 1433 that relate to paid sick leave have been mostly codified in RCW 49.46.210. And just recently, the Washington Department of Labor and Industries adopted regulations that implement the law (some regulations are still being developed, e.g., regulations addressing protection of employees from retaliation for the lawful use of sick leave). Both the new law and regulations go into effect January 1, 2018. This means, beginning next year, school districts must comply with the new paid sick leave requirements.

However, there is already a law that specifically addresses paid sick leave for school district employees: RCW 28A.400.300. To ensure that school districts are meeting their obligations under both RCW 28A.400.300 and RCW 49.46.210, they need to understand what the requirements of each are and how the laws interact with each other. Accordingly, a brief description of the key requirements of each law and how the laws interact follows.¹

Key requirements of RCW 28A.400.300

- Full-time certificated and classified employees must be granted at least 10 days of sick leave a year.
- Part-time certificated and classified employees must be granted at least that portion of 10 days as the total number of days contracted for relates to 180 days.
- No certificated or classified employee can accrue more than 12 days of sick leave per year.

- Compensation for sick leave taken must be the same as the compensation the person would have received had such person not taken the leave.
- Certificated and classified employees may accumulate sick leave from year to year up to 180 days for attendance incentive program purposes and for leave purposes up to a maximum number of contract days agreed to in a given contract, but not greater than one year.

Key requirements of RCW 49.46.210

- Nonexempt employees must be provided paid sick leave.
- Nonexempt employees must accrue at least 1 hour of paid sick leave for every 40 hours worked.
- Paid sick leave used must be paid to nonexempt employees the greater of the minimum hourly wage rate or their normal hourly compensation.
- Nonexempt employees are entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of their employment.
- Nonexempt employees must be permitted to carry over at least 40 hours of paid sick leave to the following year.

How the two laws interact

The first thing to understand is that RCW 49.46.210 does not apply to teachers, administrators, and other exempt employees, which means that a significant portion of school district employees are not covered by the new paid sick leave law. The second thing to be aware of is that school district employees, for the most part, receive greater benefits under RCW 28A.400.300 than they do under RCW 49.46.210. So, generally speaking, if school districts comply with RCW 28A.400.300, then

they will likely be in compliance with most of RCW 49.46.210.

There are, however, a couple of requirements in RCW 49.46.210 that are not found in RCW 28A.400.300 that school districts should be mindful of. These include employees being entitled to use their accrued paid sick leave beginning on the ninetieth calendar day after the commencement of their employment and employers not being able to require employees to search for or find replacements to cover the hours they miss while using their paid sick leave. Additionally, RCW 49.46.210 specifies what paid sick leave may be used for in much greater detail than RCW 28A.400.300 does.

Besides the requirements that RCW 49.46.210 imposes on employers, it also gives employers some rights. For example, employers may require employees to give reasonable notice of an absence from work as long as such notice does not interfere with an employee's lawful use of paid sick leave. And for absences that exceed three days, employers may require verification that an employee's use of paid sick leave is for an authorized purpose.

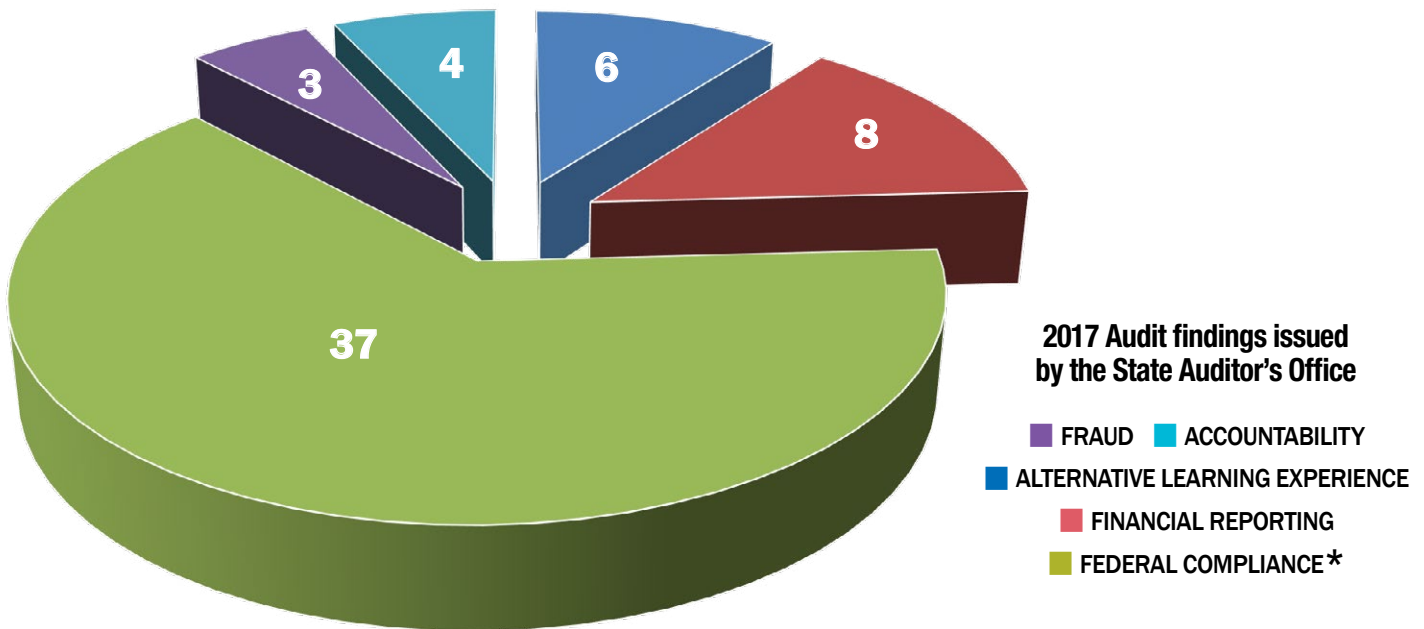
Overall, it does not appear RCW 49.46.210 will have as great of an impact on school districts as it will have on other employers since districts are already required to provide their employees with generous sick leave benefits. But school districts will still need to carefully determine to which employees the new paid sick leave law applies and ensure those employees are receiving the benefits they are entitled to.

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¹This article does not address every aspect of the new paid sick leave law and regulations. The intent is to highlight select areas and not to replace a careful study of the new law and regulations.

Gaining the Greatest Benefit from the Audit Experience

By Josh Collette, guest contributor



Since November 1, 2016, the Washington State Auditor's Office has issued just over 500 audit reports for school districts resulting in 58 findings. As in years past, the majority of these findings were issued as part of compliance/single audits performed for the Title I, Special Education, and Child Nutrition federal programs. The State Auditor's Office issued 31 out of its 37 single audit findings for these programs.

Why do these three programs make up such a large portion of the findings issued? Simply put, these are the three largest federal programs utilized by school districts. Also, some compliance requirements can be challenging for school districts.

Based on the audit finding, it appears compliance with federal procurement requirements was a common issue. Some school districts have issues with following the appropriate competitive process when procuring goods and services with federal funds. In other cases, the school districts failed to complete a process that ensured vendors were not suspended or debarred from conducting business with the federal government.

In rare instances, these issues were caused by the school districts not having adequate policies in place to help ensure compliance with these federal requirements. In those cases, the solution could be as simple as using WSSDA's [Model Policy Online](#) to update a district's

* Findings By Federal Compliance Area

Procurement	14
Suspension & Debarment	9
Income Verification	5
Cost Principles/Time & Effort	6
Highly Qualified Teachers	4
Allowable Costs/Activities	1
Comparability	1
Earmarking	1
Eligibility	1
Graduation Rate Reporting	1
Paid Lunch Equity	1

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existing policies. However, having effective policies in place is only the first step. Having appropriate internal controls and processes is the second step. The cause of many of the federal compliance findings was staff's inadequate knowledge of federal program requirements, a problem exacerbated by turnover of staff in key positions.

Hopefully, your school district was not one that received a finding during its last audit. Reviewing the audit reports of other school districts is a great opportunity to learn from the experiences of others. Being made aware of the issues identified in the table above should provide an opportunity for school districts throughout the state to evaluate their internal controls and processes for risk of future noncompliance with federal requirements. Again, one of the largest risks to evaluate is whether there has been turnover in key positions, and whether the school district's processes are adequately documented to mitigate this risk. Naturally, there are more risks to evaluate, but this is a great place to start the analysis.

What are the roles and responsibilities for addressing these issues? The school district's administration, which is led by the Superintendent, and may include the Business Manager, Principals, and Department Directors, is responsible for putting into place internal controls and processes that are adequate to ensure compliance with federal requirements. The school district's administration should perform periodic analysis of internal controls and processes to identify and evaluate potential risks for noncompliance. The school board is responsible for oversight of internal controls and processes established by district administrators.

The school directors can accomplish this through the review of managerial reports, holding work sessions with the school district's administration to address these matters, and conversations with administrators and staff. Pertinent members of staff may include payables and payroll accountants, workers on the lunch line, teachers, para-educators, school psychologists, etc. Although staff are not likely administering the federal grants, staff are likely participating in activities where they need to be aware of federal requirements, making the inclusion of staff in the review process potentially very helpful.

Another key responsibility for the school board is ensuring it provides adequate resources to administrators and staff to address risk of weakness to internal controls effectively. These resources most commonly include funding and time permitted for key staff to attend training and become more proficient in their duties.

Remember, an audit can be a great learning experience, and it does not necessarily need to be your experience. Good luck with your next audit.

Josh Collette is WSSDA's Business and Operations Officer. Before joining WSSDA, Josh worked at the State Auditor's Office as a local government auditor, which included auditing school districts.



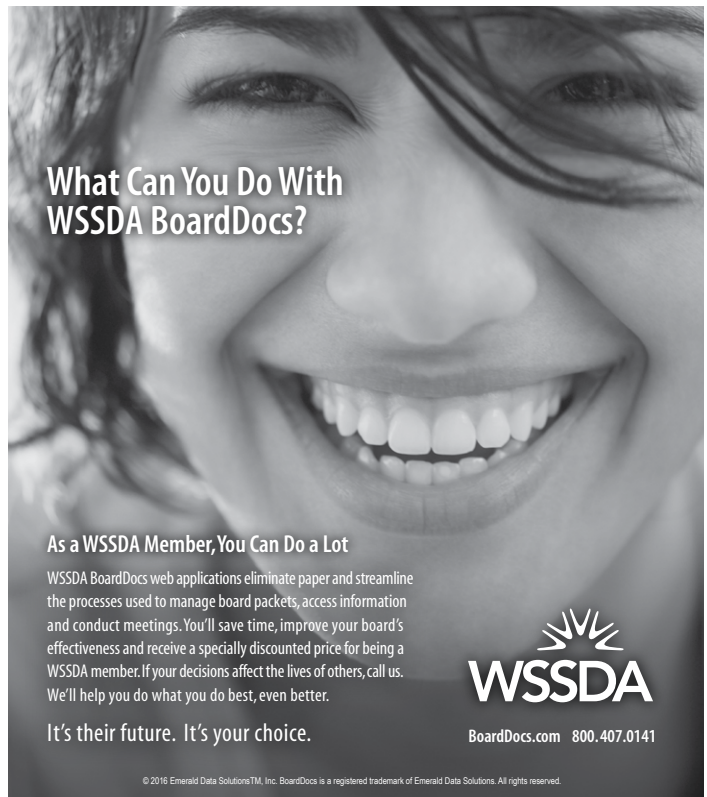
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Legal Updates

Recall of elected official for violation of Washington's Open Public Meetings Act upheld

At WSSDA, we get many questions about the Open Public Meetings Act, including questions about what happens when there are violations. This case synopsis serves as an important reminder of the potential repercussions of OPMA violations.

On October 26, 2017, the Washington State Supreme Court held that four charges against Black Diamond City Council member Patricia Pepper were factually and legally sufficient to go before the voters. These charges included that Pepper violated the OPMA, and failed to perform essential duties, such as attending council meetings, approving meeting minutes, and enacting a budget.

Background: The City of Black Diamond is in King County and has a mayor-city council form of government with five seats on the city council. In November 2015, Pepper defeated opponent Ron Taylor in an election for Black Diamond City Council.

Beginning in January 2016, a chasm developed between two sides of the council, with Mayor Carol Benson and council members Tamie Deady and Janie Edelman on one side, and Erika Morgan, Brian Weber, and Pepper, constituting a majority of the city council, on the other side.

Disputes included whether the mayor or the council had the authority to hire and fire the city attorney; whether the council was approving minutes for council meetings; who had the right to control city council meetings and agendas; whether the council had the ability to modify or breach city contracts entered into by former council members; and whether council members could miss meetings without consequences. Several council conflicts revolved around "Master Development Review Team" (MDRT) contracts for two large development projects planned in Black Diamond that Mayor Benson and former council members had previously approved.

Pepper, Morgan, and Weber, who tended to vote as a block, wanted to change the council's rules of procedure. Although opposed by Mayor Benson and council members Deady and Edelman, Pepper, Morgan, and Webber enacted Resolution 16-1069 (R-1069) which mandated a minimum of three council members (a majority of the council) for each standing committee, rather than two council members.

The enactment of R-1069 came despite the council having received advice from city attorney Carol Morris and from the city's risk

management pool, stating that the resolution could create liability for the city under the OPMA. Pepper had also received legal advice from an outside law firm indicating that as amended, a majority of the council would be attending the standing committee meetings, which could trigger OPMA requirements.

Upon passing R-1069, Pepper and a majority of the council made decisions to alter contracts regarding the MDRT. Under the advice of city attorney Morris, Mayor Benson refused to enforce R-1069. Pepper, Morgan, and Weber then voted to fire attorney Morris and Mayor Benson hired emergency interim city attorney Yvonne Ward, who submitted two memoranda to the council, concluding that R-1069 violated the Black Diamond Municipal Code (BDMC) and the OPMA, [chapter 42.30 RCW](#). MDRT contractor CCD Black Diamond Partners LLC then filed suit against the city and council members, alleging that Pepper, Morgan, and Weber held secret council and standing committee meetings conducting city business in violation of the OPMA. The OPMA case is ongoing.

On April 7, 2017, after a year and a half of tensions, Robbin Taylor filed charges, seeking to recall council member Pepper. Robbin Taylor is the wife of Ron Taylor, whom Pepper had defeated in the November 2015 election. The King County Department of Elections then issued a [Notice of Recall](#) and the superior court held a hearing to determine the legal and factual sufficiency of the recall charges and the adequacy of the ballot synopsis. The superior court ruled that four of those charges were factually and legally sufficient to support a recall petition.

These charges included:

1. Pepper, as part of a council majority, violated the OPMA, by convening and conducting closed meetings without public notice and by entering into private agreements to prepare and approve legislation.
2. Pepper, as part of a council majority, refused to attend council meetings, and failed to approve minutes.
3. Pepper, as part of a council majority, failed to enact a 2017 budget in violation of state law and instead enacted a temporary budget containing illegal provisions, impairing the city's ability to provide essential services.
4. Pepper, as part of a council majority, improperly voted to change MDRT contracts, resulting in threatened legal action against the city.

Pepper appealed the superior court's ruling that four charges were sufficient to go before the voters. In an En Banc decision, Washington's Supreme Court affirmed the trial court's ruling with regard to the first three charges, but reversed with regard to the fourth charge alleging that Pepper improperly voted to change the MDRT contract.

You can read the decision in its entirety here: [In Re: The Matter of Recall Charges Against City of Black Diamond Council Member Patricia Pepper](#).

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VISION

All Washington School Directors effectively govern to ensure each and every student has what they need to be successful within our state's public education system.


MISSION

WSSDA builds leaders by empowering its members with tools, knowledge and skills to govern with excellence and advocate for public education.

BELIEFS

WSSDA believes:

- Public education is the foundation to the creation of our citizenry, and locally elected school boards are the foundation to the success of public education.
- High-functioning, locally elected school boards are essential to create the foundation for successfully impacting the learning, development and achievement of each and every student.
- Ethical, effective and knowledgeable school directors are essential for quality public schools.
- Focusing on and addressing educational equity is paramount to assure the achievement of each and every student.
- Public school directors are best served through an innovative, responsive and flexible organization which provides exceptional leadership, professional learning and services in governance, policy, and advocacy.


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Additionally, the Editor would like to thank all the individuals who participated in the Digital Citizenship Workgroup for their contributions to the ideas and information included in the article on digital citizenship in this issue.

