



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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June 8, 2023

Delivered electronically to Dr. Traci Pierce, Superintendent, at traci.pierce@ksd.org

Subject: Complaint filed by John Trumbo, PDC Case 121794

Dear Kennewick School District 17:

Below is a copy of an electronic letter sent to John Trumbo concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted in the letter to John Trumbo, the PDC has dismissed this matter in accordance with RCW 42.17A.755(1) and will not continue its formal investigation into this allegation or take further enforcement action in this matter.

Dr. Traci Pierce, Superintendent of Kennewick School District 17 (Kennewick SD), completed a *Statement of Understanding* (SOU) and paid a \$600 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging a violation of RCW 42.17A.555 by using, or authorizing the use of, the public agency facilities of the Kennewick SD to promote a ballot proposition in the 2023 election. Specific activity addressed in the SOU included:

- 1) the development and distribution of promotional content, including messaging developed by Kennewick SD staff, containing language that was not simply fact based but rather implied support for the proposed Educational Programs and Operations Levy (EP&O Levy). Many of the messages included staged photos or video of Kennewick SD teachers, School Resource Officers, and students; and
- 2) frequent distribution of the content over multiple communication channels, including the school district's website, social media platforms, television and radio ads, Tri-City Regional Chamber of Commerce "e-blasts," flyers, "back-pack mail," community-held information sessions, banners, and school reader-boards. The frequency and extent with which Kennewick SD communicated about the levy was greater than it normally communicated with the public about other official business.

While the use of social media, digital ads and storytelling are widely used to communicate with audiences, they can also be used to persuade audiences to take a particular action. The Kennewick SD should exercise caution when using such tools to convey information regarding a ballot proposition to ensure that its communications are factual, fair, objective, and free of statements of support, emotional appeals, opinions, and other promotional or persuasive content.

PDC staff is reminding Kennewick SD officials about the importance of adhering to all of the [Guidelines for School Districts in Election Campaigns](#) which state that, in no case, will the PDC view a marketing effort related to an election as normal and regular conduct. The school district is further reminded not to use school district resources to produce and distribute promotional content and avoid statements that speculate about the possible secondary or tertiary impacts of a ballot proposition.

PDC staff expects that, in the future, you will not use, or authorize the use of, school district facilities to promote a ballot proposition in accordance with PDC laws and rules.

If you have questions, you may contact Tanya Mercier at 1-360-586-8929, toll-free at 1-877-601-2828 or by e-mail at pdcc@pdcc.wa.gov

Sincerely,

/s/ Electronically signed

Tanya Mercier
Compliance Officer

Endorsed by,

/s/ Electronically signed

Peter Frey Lavalley
Executive Director



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June 8, 2023

Delivered electronically to John Trumbo at johntnews@gmail.com

Subject: Complaint regarding Kennewick School District 17, PDC Case 121794

Dear John Trumbo:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on February 11, 2023. The complaint alleged that Kennewick School District 17, a public agency, may have violated RCW 42.17A.555 by using school district resources (facilities) to promote a ballot proposition during election year 2023.

PDC staff reviewed the allegations and evidence you submitted; the applicable statutes, rules, and reporting requirements; the responses provided by Kennewick School District 17 (the “Respondent” or “Kennewick SD”); its district-wide mailer (fact sheet), website, social media posts, and television and radio ad content; and other relevant information to determine whether the record supports a finding of one or more violations.

Based on staff’s review, we found the following:

- It **is not** within the jurisdiction of the PDC under RCW 42.17A to enforce permission to install campaign signs in the public right-of-way. Allegations specific to campaign signs in the public right-of-way were not considered in this investigation. As well, allegations made against the Kennewick Citizen Levy & Bond Committee were dismissed because, per The Kennewick SD, “All the levy materials cited by the complainant are published by the KSD and not the Kennewick Citizen Bond & Levy Committee.”
- RCW 28A.320.090 authorizes the Kennewick SD to prepare and distribute information to the public to explain instructional program, operation and maintenance of the schools of the district. This includes informing the community of the needs the district faces and needs students have that the community does not realize exist. Nothing contained in the statute is to be construed as authorizing preparation or distribution of information to the public for the purpose of influencing the outcome of a school district election.

- [RCW 42.17A.555](#) prohibits the use of public agency facilities to promote or oppose ballot propositions but does not prevent a school district from making an objective and fair presentation of the facts relevant to a ballot proposition (a “fact sheet”) if such activity is part of the normal and regular conduct of the district.
- The Public Disclosure Commission (PDC) has developed [Guidelines for School Districts in Election Campaigns](#) and a [2015 staff analysis](#) to assist school districts and other public agencies in determining whether an activity is permitted under RCW 42.17A.555. These *Guidelines* state that school districts may use agency resources to:
 - 1) Create and distribute a single district-wide mailer setting forth an objective and fair presentation of the facts (fact sheet) for each ballot measure, which may also include information regarding district needs and the anticipated impacts of the ballot measure;
 - 2) Distribute its fact sheet and related information regarding the ballot measure by means other than a district-wide mailing (e.g. website, newsletter) if the school district can demonstrate that such other communications are part of the agency’s normal and regular conduct. The method, format and frequency of communications should be typical of how the school district routinely communicates with its audiences; and
 - 3) Permit viewers to make selections on its website to learn about the anticipated impacts of a ballot measure and/or explore issues in greater or lesser detail.
- As stated in the PDC’s 2015 staff analysis guidance regarding fact sheets, an objective and fair presentation of the facts must avoid the following:
 - Overtly promotional content (including emotional language and indications of support)
 - Detailed information about the conduct of elections (e.g. ballot drop-off locations) unless such information is routinely published on a normal & regular basis via the same methods during election years in which a ballot proposition it supports or opposes does not appear on the ballot
 - Statements that seek to minimize the cost of a ballot proposition
 - Statements that speculate about the possible secondary or tertiary impacts of a ballot proposition
 - Statements that purport to describe the agency’s responsible fiscal management
- The *Guidelines* also state that public resources – including staff work hours and agency equipment and supplies – should only be used to produce factual, objective, and fair information about a ballot proposition and that public resources should not be used to collect, produce, or distribute promotional content related to a campaign or election.

Furthermore, the *Guidelines* say school districts should not publicize information that supports or opposes a ballot proposition (e.g. statements from students, faculty or staff that imply support).

- The Basic Principles in the *Guidelines* make school districts aware that, in no case, will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct.
- Kennewick SD is a member of the Tri-City Regional Chamber of Commerce and as such is permitted to disseminate information via that organization's weekly e-blast.
- The school district is authorized to use the non-profit mailing code when distributing district mailings. In response to the allegation, Superintendent Pierce said "The KSD logo is included on the materials and mailer and include the school district address."
- Kennewick SD has partnered with the City of Kennewick to employ School Resource Officers (SROs) in some of the schools of the district. Kennewick SD pays half the salary of the SROs, and they are considered Kennewick SD staff while they are working in the schools. Photos and other informational materials used by Kennewick SD to highlight their SRO officers is a normal and regular practice of the district.
- PDC staff inquired with the Kennewick Police Department about the photos used in the levy campaign and was told by Chief Chris Guerrero, "The images ... are of current Kennewick Police Department Officers who are School Resource Officers (SROs) for the Kennewick School District. These photos were likely taken while they were in the performance of their official duties, are factual in nature and we would authorize the release in a PDR [Public Disclosure Request]."
- PDC staff inquired with Kennewick SD about the images of school-age children used in the levy materials and Superintendent Pierce indicated, "The photos that were included in the levy informational materials were taken by both our communications staff and a contracted photographer. The district normally uses photos of students, staff, including school resources officers, in other district publications as part of regular conduct throughout the year." Additionally, it was confirmed "the students were photographed with permission from their parents/legal guardians for the levy information campaign."
- Kennewick SD regularly communicates with the public about official business affecting the students, parents, and community it serves in a variety of ways. It is the normal and regular practice for Kennewick SD to use materials that depict actual teachers, school personnel and children in their communications.

- Communications are designed and distributed by Kennewick SD or an outside vendor at Kennewick SD's direction. It is the usual and customary practice for Kennewick SD to use a paid vendor to assist Kennewick SD staff with informational campaigns.
- During election year 2023, Kennewick SD sent out a district-wide mailer providing recipients with information about the Kennewick School District 17 Educational Programs and Operations Levy (EP&O Levy), a ballot proposition seeking to raise local property tax rates to generate revenue for the district to fund programs and services that the state does not fund or fully fund as part of "basic education." The EP&O Levy sought to raise \$23,000,000 in 2024 and leverage an additional \$15,000,000 in state Local Effort Assistance (LEA) funding. The mailer identified programmatic and operational outcomes if the levy passed, as well as costs to taxpayers.
- In addition to its district-wide mailer, Kennewick SD distributed messages concerning the EP&O Levy through its website, social media platforms, television and radio ads, Tri-City Regional Chamber of Commerce "e-blasts," flyers, "back-pack mail," community-held information sessions, banners, and school reader-boards. The extent and frequency of communications include:
 - 1) Kennewick SD's website has a page dedicated to bonds and levy-related materials. The webpage contains information about bond and levy rates and historical campaign data. During the 2023 election, the website, under the header "Media Coverage", included 6 video posts from newspaper and television that published informational levy stories.
 - 2) Between 1/3/2023 – 2/14/2023, Kennewick SD distributed the following media communications which went into detail about the levy:
 - Nineteen unique posts were made to the Kennewick SD Facebook page. Of these posts, 6 included videos. On January 10, 2023, English and Spanish language videos were posted to the school district's YouTube channel.
 - Kennewick SD ran five hundred spots across 7 radio stations in both English and Spanish language using multiple different messages related to the levy.
 - Kennewick SD ran one thousand three hundred and thirteen spots across 4 television channels using multiple messages in English related to the levy.
 - 3) Within thirty days of the election, Kennewick SD sent 3 levy-related messages to the community using the Chamber of Commerce e-blast system. Additionally,

Kennewick SD sponsored 6 community-held information sessions, where school district staff presented levy-related messaging and handed out flyers. Flyers were also sent home with children via “back-pack mail.”

- 4) School reader-boards and banners hung on school property, reminding people to vote.

The frequency and extent with which Kennewick SD communicated about the levy was greater than it normally communicated with the public about other official business.

- Kennewick SD’s communications as described above were conveyed using language that promoted support of the levy. Some examples of this promotional language include:

- 1) Expressions such as:

- “Their educational future is in your hands. The question is, what kind of school experience do we want Kennewick kids to have?”
- “If quality education for Kennewick's kids is important to you, please vote in the Kennewick School District Educational Programs & Operations Levy election.”
- “What educational experience do the people of Kennewick want to offer these interesting and bright young minds?”
- “Is making schools safer important to you?”
- “What if the levy fails to pass – again.”
- “The Educational Programs & operations Levy on Feb. 14 supports student learning and makes our schools and community strong.”
- “... local levy funding supports student success ...”
- "... with an education that's safe, secure and fully staffed or with something less than that ..."
- “They deserve safe & secure schools ...”
- “These students are the future of Kennewick. How will the levy provide them with safer, more secure schools?”
- “These are Kennewick kids – our kids – living some of life’s amazing years, and they deserve the best school experience we can offer.”
- “Our schools rely on local levy funding to provide quality educational programs and address critical needs in our schools to support our kids in our community. Their educational future is in your hands.”
- Commentary such as “drastic cuts,” “significant impacts,” “quality educational programs,” “critical needs,” are examples of emotionally driven language included in these communications.

These examples, rather than communicate facts about the levy, convey support for the ballot proposition by Kennewick SD. In many instances, these words were spoken in videos or in recorded audio and were accompanied by music that compounded the emotional feel of the sentiment and reduced the neutrality of the message. Much of this language creates an impression of dire consequences should the levy fail and is not neutral. And many of the statements are speculative about the possible secondary or tertiary impacts of the 2023 levy. Therefore, it is determined the content and frequency of communications constituted the type of marketing or sales effort that is prohibited under RCW 42.17A.555, as shown in the Commission's *Guidelines*.

- After conducting a preliminary review and assessment of the allegations, PDC staff opened a formal investigation and held an Initial Hearing (Case Status Review) on April 28, 2023, pursuant to RCW 42.17A.755 and WACs 390-37-060 and 390-37-071. The PDC's Executive Director, Peter Frey Lavalley, presided over the Initial Hearing with the Kennewick SD's representative, Robyn Chastain, and provided information regarding the PDC's process and possible alternatives for resolving the case. Other individuals in attendance included Tanya Mercier, PDC Compliance Officer.
- The Kennewick SD was very responsive to working with PDC staff in resolving the complaint. Information was provided readily, answers to questions were timely and comprehensive, and the district was transparent about practices associated with the levy campaign.

The PDC urges public office/agency employees to exercise caution when engaging in any activity that might be prohibited under RCW 42.17A.555. As stated above, the PDC has developed *Guidelines* to aid school districts in complying with .555. However, hard and fast rules that are applicable in all situations are difficult to establish. For this reason, the unique facts and circumstances of each situation must be evaluated to determine if a violation has occurred.

Dr. Traci Pierce, Superintendent of Kennewick School District 17, completed a *Statement of Understanding* (SOU) and paid a \$600 civil penalty in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule), acknowledging violating RCW 42.17A.555 by using, or authorizing the use of, the public agency facilities of the Kennewick SD to promote a ballot proposition in the 2023 election. The \$600 penalty assessed resolves the allegations listed in your complaint.

Specific activity that was addressed in the SOU included the development and distribution of:

- 1) promotional content, including messaging developed by Kennewick SD staff, containing language that was not fact based but rather implied support for the proposed Educational Programs and Operations Levy (EP&O Levy). Many of the messages included staged photos or video of Kennewick SD teachers, School Resource Officers, and students; and
- 2) the content was distributed frequently over multiple communication channels, including the school district's website, social media platforms, television and radio ads, Tri-City Regional Chamber of Commerce "e-blasts," flyers, "back-pack mail," community-held

information sessions, banners, and school reader-boards. The frequency and extent with which Kennewick SD communicated about the levy was greater than it normally communicated with the public about other official business.

While the use of social media, digital ads and storytelling are widely used to communicate with audiences, they can also persuade audiences to take a particular action. The Respondent should exercise caution when using such tools to convey information regarding a ballot proposition to ensure that its communications are factual, fair, objective, and free of statements of support, emotional appeals, opinions, and other promotional or persuasive content.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Tanya Mercier at 1-360-586-8929, toll-free at 1-877-601-2828 or by e-mail at pdc@pdc.wa.gov

Sincerely,

/s/ Electronically signed

Tanya Mercier
Compliance Officer

Endorsed by,

/s/ Electronically signed

Peter Frey Lavalley
Executive Director

cc: Kennewick School District 17 officials