



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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March 5, 2013

MARK ROSSMILLER  
19601 SE 9<sup>TH</sup> CIRCLE  
CAMAS WA 98607

Subject: Complaint against Officials of Evergreen School District 114, PDC Case 12-157

Dear Mr. Rossmiller:

The Public Disclosure Commission (PDC) has completed its investigation of your complaint, received on January 23, 2012, and supplemented on February 9, 2012, alleging that officials of Evergreen School District 114 (Evergreen School District or District) (Superintendent John Deeder and Chief Operating Officer (COO) Mike Merlino) violated RCW 42.17A.555 by making statements during a January 18, 2012 informational Webcast that supported a February 14, 2012 Evergreen School District replacement levy measure.

Your complaint was considered in light of the following statute and rule:

**RCW 42.17A.555** prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition. This prohibition does not apply to activities that are part of the normal and regular conduct of the office or agency.

**WAC 390-05-273** states, in part: "Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

We reviewed your complaint, a video disc (DVD) copy of the January 18, 2012 informational Webcast about the February 14, 2012 levy measure called *Evergreen Levy Talk*, information on the Evergreen School District website, and the Evergreen School District's formal response to your complaint. As a result of our review, we found that:

- On January 18, 2012, Evergreen School District broadcast a live program entitled *Evergreen Levy Talk* on Comcast Channel 29. The program was also simulcast on the Evergreen School District website from the Educational Service District (ESD) No. 112 studio. *Evergreen Levy Talk* was re-broadcast on local public access television (1) live on channel 29 on January 18, 2012, and an additional six times between January 18 and February 13, 2012; (2) on channel 27 an additional six times between January 18 and February 13, 2012; and (3) live and posted to the Evergreen School District website.

- *Evergreen Levy Talk* was 60 minutes long and featured Superintendent Deeder and COO Mike Merlino. The program was moderated by Sharon Mitchell, a former local television personality and a private contractor with the District. The program script for *Evergreen Levy Talk* included (1) an introduction/discussion of the levy; (2) a recap by the moderator; (3) questions from the community; (4) a discussion of the District's budget shortfall; (5) a recap by the moderator; (6) questions from the community; (7) a review of the levy; (8) a wrap-up and final comments; and (9) closing credits.
- During the 60 minute *Evergreen Levy Talk* program, Superintendent Deeder and COO Merlino presented the costs and anticipated impacts of the levy measure. The overall tone and tenor of the program was not promotional, and the information provided appeared to be an objective and fair presentation of the facts.
- However, there was a question and answer period during which several questions submitted by viewers were responded to by either Superintendent Deeder or COO Merlino. During the question and answer segment, the moderator asked a multi-part question from a viewer concerning information included on an election related postcard allegedly distributed in the community in opposition to the levy. The viewer asked questions about the following statements that allegedly appeared in the postcard:

**Evergreen School District administrator salaries have gone up 20 percent in three years:**

- Superintendent Deeder stated that *"no administrator in our district has received any increase in the last three years, with the exception of some building administrators who were not at the top of the salary scale, and they got their increment one of those three years."* He said he has not received a pay raise in the last four years. He went on to say, *"...I am not sure where this gentleman gets his information but it is bogus, it's not factual, and would also say the individual is willing to hurt 27,000 kids by encouraging people to vote no on a something because he's upset with some people inside the district, which is pretty shallow mentality, and he continues to demonstrate that since he did the same thing in the last levy election."*

**50 percent of Evergreen School District students fail math and science competency:**

- Superintendent Deeder acknowledged that about 50 percent of Evergreen School District students are failing in math and science competency, but noted that science scores have greatly improved over the past two years. He said the low math and science scores are a concern both statewide and nationwide, and said this is not a problem isolated only to Evergreen School District. He went on to say, *"So if he wants to make that a criticism, he needs to make that a criticism for the nation and not localize it as much as he would like to."*

**In 2008, no Evergreen School District administrator took pay cuts and they received 15% pay increases:**

- Superintendent Deeder stated that in 2008, Washington State passed the budget with a 4.4 percent raise in salaries to teachers, classified school district employees, and school district administrators and administrative staff. He said he did not know where the 15 percent number was coming from, so *"It's again funny math."*

- Superintendent Deeder stated that since becoming Superintendent in 2006, Evergreen School District central administration office costs have gone down over \$2 million, even when including raises given in 2006, 2007 and 2008. He went on to say, **“So again, when you add it all up, and you look at the audited figures from the state, these claims don’t make sense.”**

**Evergreen School District health and bio-science high school is going forward anyway despite voters said no on it:**

- Superintendent Deeder stated that the Health and Bio-science high school was in the 2008 Evergreen School District bond issue, and was one of several projects in the defeated bond issue. He said the District is moving forward with the Health and Bio-sciences Academy, and is “one of the best deals that this community has ever had.” Mr. Merlino said District was provided access to \$17 million in federal stimulus bonds to help fund the Health and Bio-sciences Academy.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation. No evidence was found that in participating in the January 18, 2012 informational Webcast, Superintendent Deeder or COO Merlino used public facilities for the purpose of supporting the District’s February 14, 2012 replacement levy measure. Rather, the evidence indicates that Superintendent Deeder and COO Merlino presented the costs and anticipated impacts of the levy, and that the overall tone and tenor of the program did not promote passage of the levy. The information provided during the program appeared to be an objective and fair presentation of the facts. Thus Superintendent Deeder’s and COO Merlino’s actions met the definition of normal and regular conduct for officials of the District.

Because staff’s investigation has not revealed evidence of material violations or substantial non-compliance with any of the laws or regulations under the Commission’s jurisdiction, I am dismissing your complaint against Evergreen School District Superintendent John Deeder and Chief Operating Officer Mike Merlino with the concurrence of the Chair of the Public Disclosure Commission.

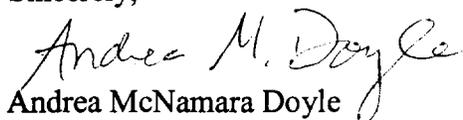
It is understandable how you could perceive that some of Superintendent Deeder’s comments during the question and answer segment of the *Evergreen Levy Talk* program promoted the District’s levy, particularly those that seemed to be personally directed to the author of the postcard. However, those comments appeared to be an attempt to address questions raised by the postcard mailing, and an interviewer’s inquiry, which is a permissible use of district resources. Superintendent Deeder will be reminded to avoid making comments that could be perceived as supporting a ballot proposition. Staff did not find evidence that, in this instance, Superintendent Deeder’s comments violated RCW 42.17A.555.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of campaign restrictions and prohibitions.

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If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll-free at 1-877-601-2828 or by e-mail at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

Sincerely,



Andrea McNamara Doyle  
Executive Director

c: John Deeder  
Mike Merlino