WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

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A brief summary of legal developments relevant to Washington public school districts from the previous calendar month.

U.S. District Court

Discrimination, Negligence

L.K.M. v. Bethel School District
120 LRP 38083 (12/3/20)

The U.S. District Court for the Western District of Washington held that the Bethel School District may have subjected a high school student to danger by removing the one-on-one paraprofessional of a classmate with a history of sexually aggressive behavior. When David M. transferred into the District as a middle schooler after engaging in sexually inappropriate behavior toward others while unsupervised in his previous district, the District created an IEP stating that he was not to be left alone with peers unsupervised and requiring a one-on-one paraeducator due to his past sexual misconduct. The IEP team removed David M.'s one-on-one paraeducator the following year when he entered high school without memorializing that decision in his IEP. District staff then logged over 20 incidents of David M. allegedly sexually harassing classmate C.K.M. that year, but failed to report even the most severe of these to the authorities, claiming that these were incidents of "inappropriate behavior" rather than sexual harassment because C.K.M.'s cognitive disabilities precluded her from objecting to David M.'s conduct. C.K.M.'s parents then sued the District for violations of the Fourteenth Amendment's Due Process clause, Title IX, and the Washington Law Against Discrimination (WLAD), and for negligence. The District moved for summary judgment on all claims, and the Court granted the motion in part and denied it in part. First, the Court denied summary judgment on the § 1983 due process claims since a reasonable juror could conclude that the IEP team affirmatively acted in creating a dangerous situation for C.K.M. and acted with deliberate disregard of David M.'s history of sexual assault by removing the one-on-one paraeducator, and could conclude that the District acted in deliberate indifference toward C.K.M.'s right to bodily integrity by failing to properly report the incidents of abuse. Second, the Court denied summary judgment on the Title IX claim, finding sufficient evidence to create a triable issue of fact regarding District officials' actual knowledge of David M.'s conduct toward C.K.M. that could reasonably be interpreted to constitute sexual harassment. Third, the Court granted summary judgment in favor of the District on a WLAD sexual discrimination claim since the alleged acts of sexual misconduct were perpetrated by a student, rather than by an employee or agent of the District. Fourth, the Court denied summary judgment on a WLAD intellectual disability discrimination claim since there were genuine

issues of fact raised as to whether the District denied C.K.M. the protection of its sexual harassment policy based on her cognitive disability. Finally, on the negligence claim, the Court denied summary judgment on the issue of whether the District breached the duty it owed to C.K.M. by failing to protect her from the known threat posed by David M. by removing his one-on-one paraeducator, but granted summary judgment in favor of the District regarding C.K.M.'s independent claims of negligent training and supervision of its employees because there was no evidence that the employees' actions occurred outside of the scope of their employment.

Washington Court of Appeals

Public Records Act

John Doe AA v. King County
No. 80321-2-I (12/7/20)

The Washington State Court of Appeals held that two individuals were properly permitted to sue anonymously to prevent King County from releasing certain records related to them. Donna Zink filed a Public Records Act (PRA) request with King County to obtain Special Sex Offender Sentencing Alternative (SSOSA) evaluations pertaining to two John Does. After the John Does filed a class action lawsuit to enjoin the County from releasing their evaluations, Zink answered and filed a cross-claim against the County to compel production of the requested records. The trial court then issued a preliminary injunction and granted the John Does' request to proceed in pseudonym with their identities only to be disclosed to the Court and to Zink as necessary for Zink to defend in the matter. During this litigation, the Washington Supreme Court decided in *Doe G v. Department of Corrections*, 190 Wn.2d 185 (2018), that SSOSA evaluations are not exempt from PRA disclosure and that a trial court must apply the factors in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30 (1982), when deciding on a party's request to proceed in a lawsuit without disclosing that party's true name. The trial court subsequently dismissed the John Does' lawsuit with prejudice, struck the preliminary injunction, and authorized the county to provide Zink with the requested records. The trial court also dismissed Zink's cross-claim against the County. Zink then appealed, claiming that the trial court improperly dismissed the John Does' lawsuit without first assessing the John Does' request to proceed in pseudonym under the *Ishikawa* factors. The Court of Appeals held that the trial court had in fact applied the *Ishikawa* factors because the trial court's order authorizing the use of pseudonyms referred to *Ishikawa* and included sufficient findings of fact pertaining to each factor. The Court also held that the John Does' identities should not be disclosed upon dismissal of their lawsuit since forcing a party to reveal information they sought to conceal would render most efforts to proceed with litigation anonymously pointless and chill historically protected parties from pursuing litigation for fear that their identities will be revealed if a court denied their request to proceed in pseudonym.

Public Records Act

WSAMA v. WCOG
No. 80266-6-I (12/14/20) (unpublished)

The Washington State Court of Appeals held that the Washington State Association of Municipal Attorneys (WSAMA) was not the functional equivalent of a government agency and is therefore not subject to the PRA. The Washington Coalition for Open Government (WCOG) requested WSAMA's records relating to its submission of amicus briefs advocating for the interests of municipal governments in PRA cases. WSAMA did not consider itself an "agency" subject to the PRA but provided WCOG with responsive records in the interest of avoiding confusion. WCOG then made a second public records request, which WSAMA complied with before seeking a

declaratory judgment that it was not an agency subject to the PRA. The trial court granted summary judgment in favor of WCOG, finding WSAMA to be the functional equivalent of a government agency subject to the PRA. The Court of Appeals then reversed and granted summary judgment in WSAMA's favor, holding that WSAMA is not the functional equivalent of an agency subject to the PRA under the factors in *Telford v. Thurston County Board of Commissioners*, 95 Wn. App. 149 (1999). The Court determined that WSAMA's amicus brief activities were not a core government function because WSAMA and any other private entity could submit amicus briefs advocating for the position of local governments, WSAMA had no control over the outcomes or the issues courts considered in these cases, and WSAMA's participation was not necessary to the resolution of these cases. The Court also determined that WSAMA was not the functional equivalent of an agency since it was not formed by government action and received no direct funding or in-kind support from governments.

Open Public Meetings Act

Tateuchi v. City of Bellevue
No. 80712-9-I (12/28/20)

The Washington State Court of Appeals held that the City of Bellevue did not violate the Open Public Meetings Act (OPMA) when the City Council discussed an appeal of a hearing examiner's determination in executive session. The City previously granted a conditional use permit (CUP) for a rooftop helistop. Ina Tateuchi applied to have the City revoke the CUP, claiming that the CUP had been abandoned. After a hearing examiner determined at a public hearing that the CUP had not been abandoned, Tateuchi appealed to the City Council. The Council considered the written record and held a limited public hearing, then discussed the merits of the appeal in executive session. The Council voted at a subsequent public meeting to adopt the hearing examiner's conclusions and deny Tateuchi's appeal. Tateuchi then sued the City, alleging that the Council had violated the OPMA by discussing her appeal of the hearing examiner's decision in executive session. The trial court granted summary judgment in favor of the City. The Court of Appeals then held that the Council did not violate the OPMA by discussing Tateuchi's appeal of the hearing examiner's decision in executive session because the discussion was exempt from the OPMA since the Council acted as a quasi-judicial body adjudicating a matter between named parties. The Court reached this conclusion by applying the four-part test outlined in *Washington Federation of State Employees v. Personnel Board*, 23 Wn. App. 142 (1979) for whether an action is quasi-judicial: (1) whether a court could have been charged with the decision; (2) whether the courts historically have performed that action; (3) whether the action involves applying the law to particular facts for purposes of determining liability; and (4) whether the action is similar to the ordinary business of the courts, rather than that of legislators or administrators. Concluding that the Council's actions mirrored judicial review, the Court affirmed.

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