

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

October 2021

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

PFR Announcements

Public Records Disclosure Training

November 9, 2021, 9 am to 3 pm
Two Union Square Conference Center, Seattle

Join Jay Schulkin and Elizabeth Robertson for a full day of hands-on training in processing public records requests and avoiding mistakes that lead to liability. This workshop will satisfy the legally-mandated training for district officials and public records officers. The cost is \$150 per person and includes lunch. Register by sending an e-mail with the names of attendees to info@pfrwa.com.

Limited space remains available. Once we have reached capacity, names will be added to a waiting list in case there are cancellations.

Ninth Circuit Court of Appeals

Title II, Section 504

Csutoras v. Paradise High School
No. 19-17373 (9/7/21)

The Ninth Circuit Court of Appeals held that the guidance issued by the Department of Education in

various Dear Colleague Letters does not create distinct legal obligations under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973. High school student Cyrus Csutoras was assaulted by another student at a high school football game. Csutoras had attention deficit disorder, and he received accommodations under a Section 504 plan. Prior to the assault, the school was not aware of any harassment or bullying involving Csutoras. The investigation into the incident revealed that the attack was motivated by jealousy over Csutoras's relationship with a female student, not in any way by Csutoras's disability. Nonetheless, Csutoras filed a lawsuit against the school district, claiming that it violated the ADA and Rehabilitation Act by failing to satisfy various Dear Colleague Letters issued by the Department's Office for Civil Rights. The Letters addressed the prevention of bullying and harassment of disabled students in schools, recommending active adult supervision and a four-factor test to determine whether certain conduct gives rise to a disability-based harassment violation. The trial court ruled that the Dear Colleague Letters were not binding and granted the district's motion for summary judgment. On appeal, the Ninth Circuit Court of Appeals held that plaintiffs seeking damages under the ADA or Rehabilitation Act must prove that the defendant intended to discriminate on the basis of disability, or was deliberately indifferent. The Court held that this is a much higher standard than articulated in

the Department's Dear Colleague Letters, and it noted that the Letters themselves explicitly disclaimed governance over private actions for damages. The Court further rejected Csutoras's claim that the guidance in the Letters provided constructive notice to schools that all disabled students require social accommodations to prevent bullying and harassment. The Court held that the Letters alone could not satisfy Csutoras's burden to demonstrate that the school had actual knowledge of prior harassment followed by a clearly unreasonable response by the school. Because Csutoras did not provide any evidence that the school had actual notice of his need for a social-related accommodation due to harassment and bullying, the Court affirmed summary judgment dismissal of his claims.

Welcome New PFR Attorneys

The attorneys and staff of Porter Foster Rorick are pleased to announce several additions to our team of attorneys providing responsive, practical, cost-effective legal advice to Washington public schools.



F. Chase Bonwell

Chase Bonwell advises and defends public school districts in all areas of school law.

Chase is a 2018 graduate of the University of Washington and a 2021 cum laude graduate of Seattle University School of Law. During law school, Chase served as Lead Article Editor of the Seattle University Law Review and as Academic

Standards Representative of the Student Bar Association. He also interned with the Honorable Beth M. Andrus of Division One of the Washington State Court of Appeals and with the United States Attorneys' Office for the Western District of Washington. Prior to joining PFR in the fall of 2021, Chase worked with the firm as a summer associate in 2020.



Olivia M. Hagel

Olivia Hagel advises and defends public schools in all areas of school law.

Olivia is a 2016 cum laude graduate of Whitman College and a 2021 honors graduate of the University of Washington School of Law. During law school, Olivia served as an Online Editor of the Washington Law Review and received the 2019 Malcolm Edwards '57 Award for Best Written Advocacy. She also interned with the Honorable John C. Coughenour of the United States District Court for the Western District of Washington and the United States Department of Education, Office for Civil Rights. Prior to joining PFR in the fall of 2021, Olivia worked with the firm as a summer associate in 2020.

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name, organization and e-mail address to info@pfrwa.com.

This information is intended for educational purposes only and not as legal advice regarding any specific set of facts. Feel free to contact any of the attorneys at Porter Foster Rorick with questions about these or other legal developments relevant to Washington public schools.

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