

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

July 2020

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

Washington Supreme Court

Washington Law Against Discrimination

W.H. v. Olympia School District
No. 97630-9 (6/18/20)

In answering two questions certified by the federal district court, the Washington Supreme Court held that (1) school districts can be held strictly liable for discrimination by employees who violate the Washington Law Against Discrimination (WLAD), and (2) discrimination under the WLAD encompasses intentional sexual misconduct, including physical abuse and assault. An Olympia School District school bus driver undisputedly sexually assaulted several passengers on the school bus, including two minor students who then brought federal and state claims against the District in the United States District Court for the Western District of Washington. The plaintiffs' amended complaint alleged that the bus driver's misconduct constituted sex discrimination in a place of public accommodation in violation of the WLAD based on the Washington State Supreme Court's holdings in *Floeting v. Group Health Cooperative*, 192 Wn.2d 848, 434 P.3d 39 (2019), that the WLAD imposes strict liability on employers for the actions of their

employees and that sexual harassment is a form of sex discrimination under the WLAD. The federal district court then certified two questions to be answered by the Washington State Supreme Court: (1) whether a school district may be subject to strict liability for discrimination by its employees in violation of the WLAD; and (2) if so, whether discrimination under the WLAD encompasses intentional sexual misconduct. The Court answered the first question by holding that school districts may be held strictly liable for the acts of employees under the WLAD based on *Floeting* and because WLAD public accommodation claims can be brought against "any person," which includes political subdivisions of the state such as school districts. The Court answered the second question by holding that intentional sexual misconduct in the form of sexual abuse and sexual assault is sex discrimination under the WLAD based on its holding in *Floeting* that sexual harassment—another form of intentional sexual misconduct—was sex discrimination for purposes of the WLAD.

Washington Court of Appeals

Public Records Act

Dotson v. Pierce County
No. 52561-5-II (6/2/20)

The Washington State Court of Appeals held that a Public Records Act (PRA) lawsuit filed more than

one year after Pierce County provided a closing letter with what it thought was the final installment of records was time-barred. The County determined that Kimberlyn Dotson violated land use rules related to a stream on her property. Dotson then filed a PRA request for certain records pertaining to her violation. The County produced records responsive to this request in three installments. The final installment produced by the County in June of 2016 was accompanied by a closing letter expressly stating “I am closing your request.” Several months later, the County provided Dotson with additional records it had mistakenly failed to identify and produce earlier. Dotson then sued the County in October of 2017 for violating the PRA. The County then provided Dotson with more later-discovered records that it had failed to provide in the initial three installments, and provided another record after reviewing Dotson’s cross motion for summary judgment and identifying additional records that might be considered responsive. The trial court granted summary judgment in favor of the County, concluding that Dotson’s suit was untimely because the one-year statute of limitations specified in RCW 42.56.550(6) ran from the date of the County’s closing letter of June of 2016 rather than from the time of the County’s delayed disclosures. The Court of Appeals affirmed the trial court, holding that the County’s closing letter was the final, definitive response that triggered the one-year limitations period under RCW 42.56.550(6).

Public Records Act

The Church of the Divine Earth v. City of Tacoma
No. 53804-1-II (6/23/20)

The Washington State Court of Appeals held that the City of Tacoma did not violate the Public Records Act (PRA) by redacting two department directors’ performance evaluations, and held that the City’s withholding log provided adequate

explanations for the redactions. The Church of the Divine Earth requested certain documents from the City, including five years’ worth of performance evaluations for two directors of City departments. The City provided redacted copies of the performance evaluations and a withholding log containing brief explanations of applicable PRA exemptions related to personal information in employee files and the right to privacy, and pinpoint citations to *Dawson v. Daly*, 120 Wn.2d 782 (1993), in which the Washington State Supreme Court held that disclosure of performance evaluations that do not discuss specific instances of misconduct is presumed to be highly offensive to a reasonable person. The Church sued the City for wrongfully redacting the performance evaluations and inadequately explaining the redactions in the withholding log. The trial court granted summary judgment in favor of the City after determining that the redactions and explanations in the withholding log were appropriate. The Court of Appeals affirmed the trial court, holding that performance evaluations were personal information under *Dawson* since they do not discuss specific instances of misconduct, that an unredacted disclosure would have been highly offensive to a reasonable person since the Church specifically requested the two directors’ performance evaluations and the City could not have deleted the identifying information to sufficiently protect their privacy, and that no legitimate public concern would have justified an unredacted disclosure considering the importance of candid employee evaluation to the efficient administration of government. The Court also held that the brief explanations citing the specific PRA exemptions and case law in the withholding log provided the Church with adequate information to determine whether the exemption applied.



PFR Announcements

Welcome

The attorneys and staff of PFR are pleased to welcome a new attorney to our team:



Christina Weidner

Christina is a 2012 University Honors graduate of Seattle University and a 2018 graduate of the University of Washington School of Law. During law school, Christina served as Executive Comments Editor of the Washington International Law Journal, externed with Justice Steven González of the Washington Supreme Court and clerked with the Solicitor’s Office of the U.S. Department of Labor. Prior to law school, Christina taught Geography and English in Puebla, Mexico. Before joining PFR in the spring of 2020, Christina represented school districts and other clients with Northcraft Bigby.

Porter Foster Rorick LLP

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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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