

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

August 2019

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

Washington Supreme Court

Employment Discrimination

Taylor v. Burlington N. RR Holdings, Inc.
No. 96335-5 (7/11/19)

The Washington Supreme Court held that the Washington Law Against Discrimination (WLAD) prohibits employers from refusing to hire an applicant based on that person's actual or perceived obesity if the applicant is able to properly perform the job in question. The plaintiff applicant had received a conditional offer of employment from BNSF, contingent on a medical exam. His medical exam indicated a body mass index that qualified him as obese and disqualified him from the position per company policy. The plaintiff sued BNSF for refusing to hire him because of the perceived disability of obesity, and the federal district court granted summary judgment for BNSF based on the court's determination that the plaintiff failed to show that his obesity was caused by a physiological condition or disorder. The plaintiff appealed to the Ninth Circuit, which certified the question to the Washington Supreme Court. The Court determined that obesity always

qualifies as an impairment, and therefore a disability, under the WLAD based on the consensus within the medical community that obesity is a physiological condition or disorder. As a result, refusing to hire an applicant based on his or her perceived obesity, rather than on the applicant's ability to perform the job, constitutes unlawful discrimination.

Attorney General Opinions

Public Records Act

2019 Op. Att'y Gen. No. 3 (8/1/19)

Responding to a request from the Franklin County Prosecuting Attorney, the Washington Attorney General issued an opinion concluding that the Public Records Act prohibits agencies from providing access to electronic records that can be sorted to display lists of individuals in response to requests made for commercial purposes, and that when faced with a request made for commercial purposes, an agency should redact names of individuals rather than categorically denying the request. RCW 42.56.070(8) prohibits agencies from providing access to lists of individuals requested for a commercial purpose. In 1980, the Attorney General previously opined that records which contained the names of numerous individuals were not subject to the commercial

purposes prohibition if the records were not themselves primarily lists of individuals (e.g., counties' paper lists of property subject to property taxation which happened to contain the names of the property owners but were sorted only by property). Here, the Attorney General recognized that with changes in technology, an electronic record that would not be considered a list of individuals under the 1980 Attorney General Opinion can become such a list if the record can be sorted or queried into lists of names. For example, if produced in Excel format rather than hard copy, the aforementioned list of property can be sorted by individual, instead of only by property. As a result, the Attorney General concluded that such records should be subject to RCW 42.56.070(8)'s commercial purposes prohibition. Next, the Attorney General opined that by its plain language, the commercial purposes prohibition only forbids agencies from producing lists of individuals, and does not forbid the production of other types of information which happen to appear in the same record as a list of individuals. As a result, the Attorney General explained that lists of individuals requested for a commercial purpose should be redacted, and agencies should not categorically deny such requests.

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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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