

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

August 2020

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

United States Supreme Court

Title VII, Sex Discrimination

Bostock v. Clayton County
No. 17-1618 (6/15/20)

The U.S. Supreme Court held that several employers who fired employees in part for being gay or transgender violated Title VII of the Civil Rights Act of 1964. In three separate cases, two private employers and a public employer fired long-time employees shortly after the employees revealed that they were either gay or transgender. All three employees brought sex discrimination claims against their employers under Title VII, which makes it unlawful to discharge or otherwise discriminate against any individual based on that individual's sex. The Courts of Appeals for the Second and Sixth Circuits determined in two of these cases that employment discrimination based on sexual orientation or transgender identity constituted sex discrimination under Title VII, but the Court of Appeals for the Eleventh Circuit determined that discharge for such reasons was not sex discrimination under Title VII in the third case. The U.S. Supreme Court affirmed the Second and Sixth Circuits, holding that the employers

unlawfully discharged the employees under Title VII since discharging an employee based on their sexual orientation or transgender identity—traits inextricably related to “sex” within the plain meaning of Title VII—necessarily requires the employer to intentionally treat individual employees differently based on their sex.

Washington Court of Appeals

Public Records Act

McKee v. Paratransit Services
No. 51920-8-II (4/7/20)

The Washington State Court of Appeals held that the Public Records Act (PRA) did not apply to a contractor through either a contractual provision requiring compliance with state ethics laws or through the PRA's application to a private entity that is the functional equivalent of a government agency. Paratransit Services is a private corporation that brokers non-emergency medical transportation (NEMT) services in several counties under a contract with the State of Washington. Paratransit's contract with the State provides that the company is an independent contractor and requires it to comply with the Ethics in Public Service statute, Chapter 42.52 RCW. In 2016, Jeffery McKee requested certain records related to his use of Paratransit's NEMT services dating back to 2011. Paratransit provided McKee

with records it believed were “client owned,” but informed him that they were not subject to the requirements of the PRA. McKee sued Paratransit for violating the PRA, and the trial court granted summary judgment dismissal in favor of Paratransit on the basis that the company was not subject to the PRA. The Court of Appeals affirmed, holding that the PRA did not apply to Paratransit because (1) the company’s executives are not state officers for purposes of Chapter 42.52 RCW; (2) neither Chapter 42.52 RCW nor the contractual provision requiring Paratransit’s compliance with that statute required compliance with the PRA; and (3) all four factors for whether a private entity qualifies as the functional equivalent of a government agency subject to the PRA under *Telford v. Thurston County Bd. of Comm’rs*, 95 Wn. App. 149 (1999), weighed against such a finding in this case.

This originally unpublished decision was designated for publication on June 30, 2020.

Public Records Act

City of Seattle v. American Healthcare Services, Inc.
No. 79692-5-I (7/20/20)

The Washington State Court of Appeals held that the City of Seattle made a prima facie showing of an employer’s failure to accommodate an employee’s disability. Jasmine Pope, a home health aide for American Healthcare Services, Inc. (AHS), had difficulty remembering to call into AHS’s telephone clock-in system due to the aftereffects of brain surgery. After receiving a disciplinary notice, Pope informed AHS of her brain surgery and provided a doctor’s note describing her memory problems. AHS did not respond to this information and only assisted Pope with clocking in starting several weeks later by occasionally calling her. Pope filed a complaint with the City alleging a failure to accommodate under the City’s employment discrimination ordinance that closely parallels the Washington

Law Against Discrimination. AHS then began assisting Pope in using the telephone clock-in system by instructing her to set reminders on her own telephone and by occasionally calling her, but soon suspended Pope in part due to the need to accommodate her disability. Pope’s medical provider then advised AHS that Pope was cleared to work, but AHS still would not let her return to work without receiving medical guarantees of her ability to use the telephone clock-in system despite never arranging for Pope to have an independent fitness for duty examination. The City filed a complaint with a hearing examiner after concluding that AHS did not accommodate Pope’s disability. The hearing examiner determined that the City did not sufficiently allege a prima facie case of discrimination and dismissed all claims against AHS on summary judgment. The superior court reversed. The Court of Appeals then held that the City had actually met its burden to produce evidence supporting a prima facie case by providing evidence that Pope was certified and able to perform basic caregiving services, that utilizing the phone clock-in system was not an essential function of the job, and that AHS responded to Pope’s request for assistance only by providing occasional assistance before she filed the complaint. The Court also held that AHS’s assertion that it could not develop an accommodation without certain medical proof of Pope’s disability was an insufficient nondiscriminatory reason for its failure to accommodate since AHS ignored Pope’s medical provider’s advice that she was fit for work and never requested that she submit to a fitness for duty medical examination.

Porter Foster Rorick LLP

WASHINGTON SCHOOL LAW UPDATE is published electronically on or about the 5th of each month. To be added to or removed from our e-mail distribution list, simply send a request with your



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.

Update Editors



Elliott Okantey
elliott@pfrwa.com



Jay Schulkin
jay@pfrwa.com



PORTER FOSTER RORICK
LLP

601 Union Street | Suite 800
Seattle, Washington 98101
Tel (206) 622-0203 | Fax (206) 223-2003
www.pfrwa.com

Lance Andree
Lynette Baisch
Cliff Foster
Tevon Edwards
Jeff Ganson
Kathleen Haggard

Parker Howell
Lauren McElroy
Rachel Miller
Elliott Okantey
Buzz Porter

Liz Robertson
Mike Rorick
Jay Schulkin
Valerie Walker
Christina Weidner
Lorraine Wilson

