

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.

Ninth Circuit Court of Appeals

Religious Discrimination

CAPEEM v. Torlakson

No. 19-15607 (9/3/20)

The Ninth Circuit Court of Appeals held that California's state-mandated curriculum guidelines were not unconstitutionally discriminatory against Hindu children or their parents. CAPEEM, an organization of parents of Hindu children in the California public schools, sued California's Department of Education and Board of Education alleging that history and social science curriculum guidelines unconstitutionally discriminated against Hinduism. The federal district court dismissed CAPEEM's Equal Protection, Free Exercise, and Fourteenth Amendment substantive due process claims, and granted summary judgment in favor of the state education agencies on CAPEEM's Establishment Clause claim. The Court of Appeals affirmed, holding that the Equal Protection claims were prohibited since they were an indirect attack on school curriculum without evidence of intentional unlawful discrimination; that Fourteenth Amendment due process rights do not entitle parents to determine school curriculum;

and that the curriculum guidelines did not penalize, interfere with, or otherwise burden religious exercise as required for a Free Exercise claim. The Court also held that summary judgment was properly granted in favor of the state education agencies on the Establishment Clause claim because the curriculum did not implicitly endorse other religions by calling for events and figures from the texts of those religions to be taught as historical fact, and because the curriculum could not be objectively read as disparaging Hinduism.

First Amendment

Belgau v. Inslee

No. 19-35137 (9/16/20)

The Ninth Circuit Court of Appeals held that the State of Washington and the Washington Federation of State Employees ("WFSE") did not violate the First Amendment by deducting union dues from employee wages for the remainder of the year-long term that the employees had initially agreed to. State of Washington employees represented by WFSE could elect on their union membership agreements to voluntarily authorize and direct the State to deduct union dues from their wages for an irrevocable period of one year. Following the Supreme Court's ruling in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the State and WFSE entered into MOUs that eliminated a CBA provision authorizing the State to deduct an agency shop fee from nonmember paychecks. The MOUs

did not eliminate CBA provisions requiring the State to collect membership dues and honor the terms of the employees' membership agreements. A group of employees then notified WFSE that they no longer wanted to be union members. WFSE terminated their memberships, but the State continued to deduct membership dues from their wages until the irrevocable one-year terms expired. The employees then filed a putative class action against the State and WFSE, alleging that the State and WFSE violated their First Amendment rights by authorizing the dues deductions without the employees' consent. The federal district court granted summary judgment in favor of the State and WFSE and dismissed the case. The Court of Appeals held on appeal that the State did not violate the employees' First Amendment rights by continuing to deduct dues through the irrevocable one-year period because the State was acting pursuant to the terms of the membership agreement between WFSE and the employees; there was no compelled involuntary dues deduction. The Court also held that WFSE did not violate the employees' First Amendment rights because WFSE is a private organization that is not bound by the First Amendment.

Disability Discrimination, Section 504

McIntyre v. Eugene School District
No. 19-35186 (9/23/20)

The Ninth Circuit Court of Appeals held that a student could bring claims under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) without exhausting administrative remedies under the Individuals with Disabilities Education Act (IDEA). Eugene School District student Lexington McIntyre's 504 plan called for testing accommodations and emergency health protocols. She did not have an IEP. Her French teacher declined to implement the testing accommodations and repeatedly suggested that McIntyre did not belong in the French immersion

program. In response to a formal complaint made by McIntyre's parents, the school determined that the teacher violated the District's discrimination and harassment policies, and the school later failed to address harassment by students and another teacher's failure to implement McIntyre's testing accommodations. The school also failed to comply with the 504 plan's emergency protocols when McIntyre was injured, and later impeded her ability to apply for college by failing to facilitate certain evaluations or submit documentation relating to her credits and college admissions exam testing accommodations. McIntyre sued, alleging that the District discriminated against her by failing to provide reasonable accommodations under Section 504 and the ADA, and by creating a hostile learning environment. She did not seek relief under the IDEA. The district court determined that the crux of McIntyre's Section 504 and ADA claims was the District's failure to provide a free and public education (FAPE) under the IDEA, and granted summary judgment to the District because McIntyre failed to exhaust the IDEA's administrative remedies before filing the claims in court. The Court of Appeals reversed, holding that McIntyre was not required to exhaust the IDEA's administrative remedies because the 504 plan's accommodations were not considered FAPE under the IDEA, she pursued non-IDEA procedures to address the failures to implement her 504 plan, and her hostile learning environment claim could be brought under the ADA. As a result, the Court remanded to the trial court for further proceedings.

Washington Court of Appeals

Open Public Meetings Act

West v. Seattle City Council
No. 79920-7-I (9/8/20)

The Washington State Court of Appeals held that the City of Seattle may have violated the Open



Public Meetings Act (OPMA) when seven of the nine members of the City Council signed onto a draft press release that may have indicated the Council's intent to repeal a tax ordinance. After the Council enacted a tax on large employers in the City in 2018, Councilmembers communicated among each other and with the Mayor's office by email, text, phone, and in meetings regarding a repeal of the tax. The Mayor's staff drafted a statement on behalf of the Mayor and the Council announcing plans supported by a majority of Councilmembers to consider legislation repealing the tax. The Mayor's staff then sent copies of the draft statement to the Council's communications staff requesting that each Councilmember indicate their willingness to sign onto the statement. Seven Councilmembers reviewed and approved the draft, but the language indicating that a majority of the Council supported the legislation was removed before the statement's final release. The same seven Councilmembers who signed onto the statement then voted in favor of the repeal legislation at the following day's public Council meeting. Arthur West then sued the City and the City Council, alleging that their communications in the days leading up to the repeal vote constituted collective intent to transact official business outside of a public meeting in violation of the OPMA. The trial court granted summary judgment in favor of the Council and dismissed West's claims with prejudice. The Court of Appeals reversed, holding that a quorum of a legislative body collectively committing to each other to vote a certain way on a piece of pending legislation may be evidence that a majority attended a "meeting" with the collective intent to take "action" in violation of the OPMA. The Court also held that the evidence of seven councilmembers signing onto the draft statement indicating that a majority of the Council supported repeal created a genuine issue of fact as to whether a majority of the Council had in fact collectively committed to repeal the tax. As a

result, the Court remanded the matter to the trial court for further proceedings.

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