

# 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.*

## Washington Supreme Court

### Charter School Funding

*El Centro de la Raza v. State*  
No. 94269-2 (10/25/18)

The Washington Supreme Court upheld the Charter School Act (the Act), which establishes and provides funding for 40 public charter schools. After the Court invalidated an earlier version of the Act for violating constitutional funding provisions, the legislature enacted a modified version of the Act in 2016. The plaintiffs argued the modified version of the Act violated several provisions in the Washington constitution. Specifically, the plaintiffs argued that the constitution prohibits the legislature from (1) creating and funding schools that are not “common public schools,” (2) delegating the Superintendent of Public Instruction’s authority to the Washington State Charter School Commission, (3) diverting common school funds to support charter schools, and (4) revising state collective bargaining laws without setting forth those revisions. The Court held that (1) the constitution permits the legislature to create and fund non-common, specialized

schools, including charter schools, (2) the Act does not divest the Superintendent of his supervisory power over charter schools, and (3) the Act provides separate funds for charter schools and thus does not divert common school funds. But because the Act revised parts of state collective bargaining laws without setting forth those revisions in full, the Court held that those provisions violate the state constitution. The Court found these provisions are severable, however, leaving the majority of the Act in force.

## Washington Court of Appeals

### Public Records Act, Sexual Misconduct

*Doe v. Washington State Dep’t of Fish and Wildlife*  
No. 49186-9 (10/16/18) (unpublished)

The Washington Court of Appeals held that the Department of Fish and Wildlife (Department) was not required to redact references to Jane Doe in records that did not relate to her alleged sexual misconduct. The Department received a public records request for records relating to any investigations of two Department employees, including Doe. After learning of the request, Doe sought a preliminary and permanent injunction enjoining disclosure of the records without further redaction of references identifying Doe. The trial court partially granted Doe’s injunction, requiring

redaction of identifying information only when such information appeared in records related to Doe's alleged sexual misconduct. But because some identifying references did not connect Doe to her alleged sexual misconduct, they did not implicate her right to privacy and thus did not require redaction. Doe appealed the trial court's order, arguing that a person reviewing the records could connect her to the alleged sexual misconduct through references contained in records not directly relating to the sexual misconduct. The Court of Appeals disagreed, holding that even though a person might be able to figure out Doe's identity from references in the records that do not implicate her privacy interest, that does not mean that such references must be redacted.

## PERC

### Refusal to Bargain

*Benton County*, Decision 12920 (10/10/18)

PERC held that an employer committed an unfair labor practice by declining to negotiate changes to deferred compensation. Since the 1990s, the employer had provided access to two optional deferred compensation plans. The original decision to offer deferred compensation was never bargained, and none of the CBAs at issue referenced deferred compensation. In 2017, the employer announced that it planned to freeze employee contributions to one of the plans in an effort to reduce costs charged to employees. The Union demanded to bargain the changes. The employer declined and took the position that it has no duty to bargain deferred compensation. PERC held that there was a duty to bargain. In this case, PERC held that the decision to stop offering a deferred compensation plan was a mandatory subject because it impacts employees' flexibility in investing wages. The employer thus impermissibly refused to bargain when it declined to schedule

bargaining dates or to otherwise negotiate with the union regarding the plan.

## Porter Foster Rorick LLP

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### Update Editors



Jon Collins  
[jon@pfrwa.com](mailto:jon@pfrwa.com)



Leilani Fisher  
[leilani@pfrwa.com](mailto:leilani@pfrwa.com)



Jay Schulkin  
[jay@pfrwa.com](mailto: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](http://www.pfrwa.com)

Lance Andree  
Lynette Baisch  
Jon Collins  
Tevon Edwards  
Leilani Fisher  
Cliff Foster

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