

# WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK  
LLP

September 2023

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

## Ninth Circuit Court of Appeals

### Equal Protection

*Hecox v. Little*

No. 20-35815 (8/17/23)

The Ninth Circuit Court of Appeals upheld an injunction blocking Idaho's Fairness in Women's Sports Act (Act) from taking effect. In March 2020, Idaho enacted a first-of-its kind categorical ban on all transgender girls and women participating in, or trying out for, public school female sports teams. The Act also included a sex dispute verification process whereby any individual can challenge the sex of a female student athlete and require her to undergo medical procedures to verify her sex, including gynecological exams. In April 2020, two students filed a lawsuit in district court challenging the Act under Title IX and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The first student plaintiff was a transgender woman who wished to try out for collegiate women's track and cross-country teams, and the second plaintiff was a cisgender woman who played on high school varsity teams and feared her sex would be

challenged under the Act due to her masculine presentation. The plaintiffs sought declaratory judgment that the Act was unlawful and an injunction against the Act's enforcement. The district court entered preliminary injunctive relief in August 2020, ruling that the plaintiffs were likely to succeed on their equal protection claims. The Ninth Circuit Court of Appeals affirmed, holding that the Act's sweeping prohibition on transgender female athletes likely constituted impermissible sex-based discrimination in violation of the Equal Protection Clause. The Court first held that the Act is a form of sex-based discrimination because it discriminates against transgender women by categorically excluding them from female sports, and the Act also discriminates on the basis of sex by subjecting all female athletes, but no male athletes, to invasive sex verification procedures. As a result, the Court held that the Act must survive the demanding heightened scrutiny standard to be enforceable, which requires the government to show that the challenged sex classification serves "exceedingly persuasive" and important governmental objectives. The Court held that the Act did not advance the state's asserted interest in "promoting sex equality" and "providing opportunities for female athletes" because it perpetuated historic discrimination against both cisgender and transgender women by categorically excluding transgender women from athletic competition and subjecting all women to invasive

sex verification procedures that male athletes would not be forced to undergo. The Court further held that the Act's sweeping prohibition on transgender female athletes was too overbroad to survive heightened scrutiny, as it applied to all transgender women and girls, regardless of whether they had gone through puberty or hormone therapy. The Court held that a vague, unsubstantiated concern that transgender women might one day dominate women's athletics was insufficient to satisfy heightened scrutiny. The Court further held that the sex verification provision failed heightened scrutiny because it subjected only women and girls, including potentially elementary age girls, to a "humiliating" and "unconscionably invasive" medical procedure to examine their reproductive anatomy. Given that the sex verification process would likely discourage participation of Idaho female students in athletics, the Court held that the Act's means undermined its purported objective and imposed an unjustifiable burden on all female athletes in Idaho. As a result, the Court affirmed the district court's order enjoining enforcement of any provision of the Act. Judge Christen concurred in part and dissented in part, agreeing that injunctive relief was warranted, but disagreeing with the majority's conclusion that the sex verification provision applied solely to women and girls, concluding that it applied to all students who wished to participate on women's sports teams. Judge Christen also disagreed with the scope of the injunction because it enjoined enforcement as to all transgender female athletes, not only those who had not gone through puberty or received hormone therapy to suppress testosterone.

### **Employment Discrimination**

*Hittle v. City of Stockton*  
No. 22-15485 (8/4/23)

The Ninth Circuit Court of Appeals affirmed dismissal of a religious discrimination lawsuit filed by the City of Stockton's former Fire Chief, Ronald

Hittle. In May 2010, the City received an anonymous letter from a fire department employee claiming that Hittle favored employees who shared his Christian faith and describing Hittle as being part of a "Christian Coalition" at work. The City Manager met with Hittle and asked whether there was a "Christian Coalition" in his department, and whether those employees received more favorable treatment. In response, Hittle told the City Manager that there was no Christian clique, and that the City had no right to tell Hittle what he could do with respect to his religion. Around that time, Hittle also refused to cooperate with the City's plans to implement budget cuts, and notified the City that he would not agree to any layoffs in his department or recommend a cut in staffing. Hittle also failed to disclose that he co-owned a vacation property with the Firefighter's union president, which the City Manager believed created a conflict of interest, specifically regarding Hittle's refusal to cooperate on implementing budget cuts. In fall 2010, the City Manager directed Hittle to attend a leadership training program specifically intended for Fire Chiefs or designed for upper management of public entities. Instead, Hittle attended an event called the Global Leadership Summit, which was sponsored by a church, and the purpose of which was to "transform Christian leaders." Hittle attended the Global Leadership Summit with three other firefighters in his department while on duty using a city vehicle. The City received a complaint related to Hittle's attendance at the Global Leadership Summit, in response to which Hittle told the City Manager that she could not tell him how to practice his religious faith. The City retained an outside investigator to investigate whether Hittle had engaged in misconduct and violated City policy. The investigation found that Hittle had inappropriately used City time and resources to attend a religious event, failed to properly report time off, failed to disclose that he co-owned property with the union president, and failed to



follow City directives in proposing budget cuts and department layoffs. The report also concluded that Hittle had failed to recommend appropriate discipline for misconduct of two firefighters within his department. Based on the findings in the report, the City removed Hittle from his position as Fire Chief. Hittle filed an employment discrimination lawsuit, alleging that the City terminated him for his religious beliefs. Hittle's discrimination claims largely centered on the conversations he had with the City Manager regarding a "Christian Coalition," and her questioning him on attending the religious Global Leadership Summit, which Hittle alleged evidenced religious animus. The district court dismissed Hittle's claims on summary judgment. The Ninth Circuit affirmed, holding that the City Manager's comments regarding a "Christian Coalition" did not evidence religious animus because she was merely repeating complaints from other members of the fire department. The Court further held that Hittle's use of City resources to attend a religious event and his failure to disclose a personal relationship and corresponding financial interests with the union president constituted legitimate non-discriminatory reasons for removing Hittle. As a result, the Court held that Hittle failed to demonstrate hostility toward religion was a motivating factor in his termination, and it affirmed dismissal of Hittle's complaint in its entirety.

### Washington Supreme Court

#### Public Records Act

*Wash. Fed'n of State Employees Council 28 v. Freedom Foundation*  
No. 101093-1 (8/24/23)

The Washington Supreme Court held that a coalition of labor unions representing public employees in Washington were not entitled to an injunction permanently barring the release of certain employees' personal information in

response to a Public Records Act (PRA) request. Nonetheless, because the information requested was subject to a new PRA exemption that bars the release of confidential information of employees who are survivors of domestic abuse, the Court remanded for the superior court to apply the new exemption to the requested records. The Freedom Foundation (Foundation) made a series of public records requests to hundreds of local and state government agencies seeking the name, contact information, job title, FTE status, and salary information for all public employees. The Washington State Federation of State Employees and other labor unions (Unions) filed a complaint in superior court, arguing that the release of the requested information for employees who were survivors of abuse would violate those employees' fundamental privacy and personal safety rights guaranteed by the state and federal constitutions. The superior court granted a preliminary injunction preventing the public agencies from releasing the personal information for employees who provided their respective employers with documentation supporting their, or their family members', status as abuse survivors. In issuing the order, the trial court ruled that disclosure would violate those employees' constitutional privacy rights by placing their personal bodily security and lives in jeopardy. The superior court later issued a permanent injunction, exempting from disclosure the release of this information for approximately 1,600 public employees identified as abuse survivors. The injunction was premised on generalized evidence of risks to survivors, not on any evidence specific to individual survivors. The Foundation appealed, arguing that no constitutional right existed to protect against the disclosure of such information. The Court of Appeals held that the Due Process Clause of the Washington Constitution guarantees survivors of domestic violence a fundamental constitutional interest in preventing the release of information regarding their whereabouts. However, the court



held that the Unions failed to present sufficient, admissible evidence to satisfy the PRA injunction standard because their evidence consisted of declarations from union representatives conveying inadmissible hearsay and a declaration from a domestic violence expert generally describing the safety risk to people who have experienced such abuse. As a result, the Court of Appeals reversed the permanent injunction and remanded for the superior court to determine whether particular employees would be placed in danger if the requested information was disclosed. The Washington Supreme Court granted review, and while the case was pending, the Washington Legislature amended the PRA to add a new exemption for information related to employees who are survivors of domestic violence, sexual assault, stalking, or harassment. To qualify for the new exemption, employees must provide proof of participation in the address confidentiality program or sworn statements attesting that they or their dependents are survivors of abuse and have a reasonable belief that the risk of those offenses continue to exist. The Washington Supreme Court held that the issues in this case could be resolved based on the new exemption without making a constitutional interpretation, and as a result, it reversed the Court of Appeals decision as to the constitutional holding. The Court further agreed with the Court of Appeals that the Unions did not present evidence of particularized harm to affected public employees to warrant permanent injunctive relief, and it remanded to the superior court to consider the new statutory exemption.

## Washington Court of Appeals

### School Board Action

*Hampson v. Seattle School District No. 1*  
No. 83960-8-I (8/21/23) (unpublished)

The Washington Court of Appeals held that the Seattle School District Board of Directors (Board)

acted within its authority when it required one of its directors to abide by the District's policy prohibiting harassment, intimidation, and bullying (HIB) going forward. The District's Board policy prohibits HIB directed toward District employees or volunteers, and it defines HIB to include verbal comments that substantially interfere with an employee's work environment or substantially disrupt the orderly operation of the workplace. In September 2020, two Black District employees submitted a HIB complaint against Board Director Chandra Hampson. The employees claimed that Hampson had publicly berated, discredited, and silenced them during their ongoing work on a new draft antiracism policy. At Hampson's request, the District retained an outside investigator to investigate the HIB complaint. The investigator interviewed 20 witnesses and reviewed more than 5,500 pages of documents. The investigator issued a report in August 2021, which found that Hampson had violated the HIB policy, including by yelling at the employees when they voiced concern regarding the draft antiracism policy that had been circulated and by interrupting and curtailing the employees' remarks during an executive committee meeting. The District issued an outcome letter notifying Hampson that she had violated the HIB policy, but deferred to the Board to determine whether any corrective action should be taken. The Board voted to provide Hampson a copy of the HIB policy and directed her to comply with it going forward. Hampson filed an appeal in superior court under RCW 28A.645.010, which allows any person aggrieved by a decision of a school board to challenge the board action in superior court, arguing that the court should overturn the District's determination that Hampson violated the HIB policy and the Board's directive. The superior court upheld the HIB determination and the Board's directive. The Court of Appeals affirmed, holding that the Board's action was administrative in function rather than quasi-judicial, and therefore entitled to



a more deferential “arbitrary and capricious” standard of review. Applying that standard, the Court held that the Board decision was taken after due and thorough consideration of the independent investigation. The Court further rejected Hampson’s argument that the HIB policy should not apply to her as a director, noting that Hampson had insisted the employees’ complaint be investigated under the HIB policy.

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