PORTER FOSTER RORICK LLP

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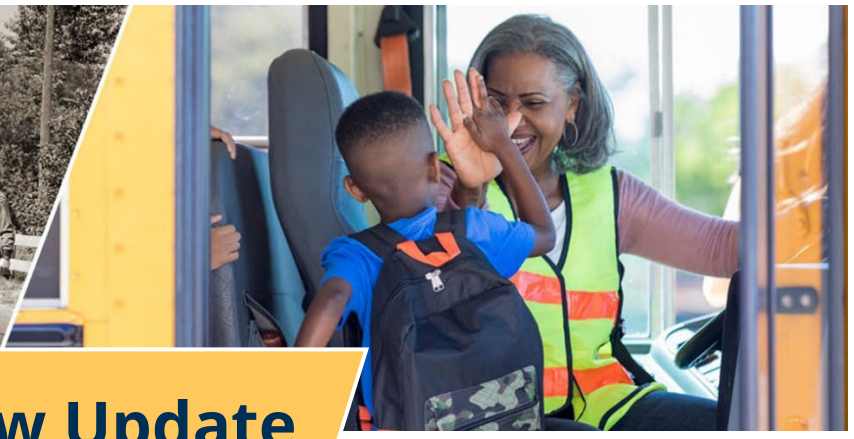

Washington School Law Update

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

Ninth Circuit Court of Appeals

Religious Discrimination

Youth 71Five Ministries v. Williams
No. 24-4101 (8/18/25)

The Ninth Circuit Court of Appeals held that the Oregon Department of Education did not violate the First Amendment when it limited grant awards to community organizations that did not discriminate in employment based upon religion. The Department runs a youth community grant investment program that funds community organizations serving at-risk youth. In 2023, the Department implemented a new policy for its upcoming grant cycle. The policy required all applicants to certify that they do not discriminate based on certain protected characteristics, including religion, in their employment practices. Youth 71Five Ministries (71Five) is a nonprofit Christian ministry that offers youth-oriented social and recreational programs. It requires all its board members, employees, and volunteers "to be authentic followers of Christ," and to pledge a statement of faith adhering to Christianity. 71Five applied for a grant in 2023, and as part of its application, it certified that its hiring practices complied with the Department's new rule, believing that its religious hiring practices were constitutionally exempt from the eligibility requirement. The Department later received an anonymous report that 71Five imposed religious requirements in its hiring practices, which prompted the Department to investigate and ultimately rescind 71Five's grant funding. 71Five filed a lawsuit in federal court, alleging in part that the Department's enforcement of its new rule violated 71Five's free exercise of religion in violation of the First Amendment to the U.S. Constitution. 71Five sought a preliminary injunction to enjoin enforcement of the rule while the lawsuit was pending, which the district court denied. 71Five appealed, and the Ninth Circuit affirmed the lower court's denial of a preliminary injunction, holding that 71Five was unlikely to succeed on the merits in its free exercise of religion claim. The Court first held that the rule was not subject to strict scrutiny because it was neutral and generally applicable, meaning that it equally excluded both secular and religious organizations based on their hiring criteria. The Court further held that the rule did not favor comparable secular activity because it still allowed 71Five to tailor its youth services to promote uniquely Christian values. As a result, the Court held that the rule was subject to the more deferential rational-basis standard of review, which was easily satisfied by the Department's interest in ensuring equal access and inclusion in the programs it funds. However, the Court

held that application of the rule beyond grant-funded activities, such as imposing any requirements on 71Five's selection of speakers for activities that do not receive grant funding, would pose an unconstitutional burden, and it remanded with instruction for the district court to enter an injunction barring enforcement of the rule beyond grant-funded activities. Judge Rawlinson concurred in the judgment only, noting that the Court's review at this stage is limited and that the district court is afforded considerable deference when reviewing whether to grant injunctive relief.

Washington Court of Appeals

Religious Accommodation

Henry v. Washington Department of Fish and Wildlife
No. 59241-0-II (8/12/25) (unpublished)

The Washington Court of Appeals reversed dismissal of a state employee's religious discrimination lawsuit, holding that the employee presented sufficient evidence for a jury to conclude that complying with her employer's COVID-19 vaccination mandate could burden her sincerely held religious beliefs. Carol Henry worked for the Department of Fish and Wildlife (DFW) as a Habitat Biologist 2 ("Bio 2"), a position in which she was responsible for evaluating various applications for potential impact on fish life and habitat. According to Henry, the position was primarily a desk job, with a small portion of her time spent in the field on site visits and attending in-person meetings. In August 2021, in response to the COVID-19 pandemic, Governor Jay Inslee issued a proclamation requiring all state agency workers and health care workers to be fully vaccinated against COVID-19. The proclamation included exemptions to the vaccination requirement for disability and religious accommodations consistent with state and federal antidiscrimination laws. Henry requested a religious exemption from the vaccination requirement, and requested as a reasonable accommodation that she be able to work remotely and wear masks while in the presence of others. Following a reasonable accommodation meeting, DFW denied Henry's request, reasoning that her position required her at times to be in the physical presence of others, and that social distancing and masking would not sufficiently reduce the risk of transmission. DFW further noted that reassigning her in-person duties to other employees would unfairly increase those employees' workloads and would pose an undue hardship to the agency. In October 2021, DFW terminated Henry for failing to comply with the vaccine mandate; however, it later offered her a Budget Analyst position, which was fully remote, and which Henry accepted. The Budget Analyst position paid less than the Bio 2 position, and unlike the Bio 2 position, was unrepresented and could be terminated at will. Henry filed a lawsuit against DFW, arguing in part that the agency had violated the Washington Law Against Discrimination by failing to accommodate her religious beliefs. The trial court dismissed her lawsuit on summary judgment. The Court of Appeals reversed, holding that two declarations Henry submitted in which she stated her belief that she should put her faith and trust in the Lord for health, rather than relying on vaccinations, was sufficient to create a genuine issue of material fact as to the sincerity of her religious beliefs. The Court further held that there remained a genuine issue of material fact as to whether accommodating Henry's religious beliefs posed an undue hardship, reasoning that DFW's "bare assertion" that in-person work was an essential function of her job was insufficient to obtain judgment as a matter of law. Finally, the Court rejected DFW's claim that it had accommodated Henry's religious beliefs by offering her the Budget Analyst position, given the position's reduced pay and benefits. Judge Price dissented and would have held that Henry failed to present sufficient evidence that her objection to the vaccine was a bona fide religious belief, as compared to "a personal belief cloaked in religion." He also would have held that DFW presented sufficient evidence that in-person collaboration was an essential function of the job given that the job description included duties that would reasonably require in-person contact, including interacting with local governments, state and federal agencies, and members of the public.

Public Records Act

Methow Valley Citizens Council v. Okanogan County
No. 40747-1-III (8/19/25) (unpublished)

The Court of Appeals held that Okanogan County complied with the Public Records Act when it redacted portions of a building permit application checklist as attorney-client privileged. The Okanogan County Planning Department is responsible for reviewing building permit applications to determine legal water availability. The County's attorney drafted a memorandum to the Planning Department advising it how to complete this process. The memorandum contained a list of numbered questions for the County to consider, and for some of the questions, there was an explanation of the attorney's reasoning for next steps depending on whether the question's answer was "yes" or "no." The planning director used copies of the checklist to analyze permit applications. She mentioned her use of the checklist at a public board meeting. Following the meeting, Methow Valley Citizens Council (MVCC) requested a copy of the checklist. The County produced heavily redacted copies that revealed the questions the planning director was to consider, but redacted the advice and analysis of the attorney, citing attorney-client privilege. MVCC sued the County, alleging that the records were not in fact privileged. A superior court commissioner reviewed the records in camera and concluded that the checklist was not privileged. A superior court judge then reviewed the records in camera and reversed, holding that the checklist was indeed privileged. On appeal, the Court of Appeals affirmed the superior court, holding that the checklist was privileged and rejecting each of MVCC's arguments to the contrary. First, MVCC argued that the checklist was not privileged because it was not a communication between the County and its attorney and was not created for the purpose of seeking attorney advice. The Court rejected this argument on factual grounds, namely that the checklist had been prepared by the attorney at the County's request for legal compliance reasons. Second, MVCC argued that the checklist was prepared for the County for its regular administrative functions and was therefore not privileged. The Court held otherwise, noting that the redacted portions of the checklist delved into litigation risks, legal trends, and when additional legal advice should be sought. Third, MVCC argued that by invoking the checklist at a public meeting and incorporating it into the County's permitting process, the checklist could not be privileged. The Court disagreed, relying on other precedent stating that requiring disclosure of a legal memo if the advice within had been embraced by the agency would eviscerate the privilege. Fourth, MVCC argued that even if the checklist was privileged, the County waived the privilege by producing a redacted version. The Court rejected the argument, relying on Washington Supreme Court precedent under which an agency did not waive the privilege as to some legal advice by producing related legal advice. As a result, the Court affirmed dismissal.

PFR Announcements

Public Records Disclosure: A Practical Workshop

November 6, 9:00 am to 3:30 pm
Two Union Square Conference Center, Seattle

Join Jay Schulkin and Olivia Hagel for a full day of hands-on training in processing public records requests and avoiding mistakes that lead to liability. This workshop will satisfy the legally-mandated training for district officials and public records officers. The workshop will be held at the Two Union Square Conference Center in downtown Seattle. Registration is limited to 40 participants to facilitate small group activities and interactive dialogue. The cost is $300 per person and includes lunch. Register by sending an email with your name, school district, and purchase order information to info@pfrwa.com. Any questions can be directed to info@pfrwa.com or by calling us at (206) 622-0203.

Washington School Law Update

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September Masthead Photo Credit

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