

**FILED**

OCT 12 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 289826

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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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TIFFANI WILLIAMS,

Appellant and Cross-Appellant

vs.

RICHLAND SCHOOL DISTRICT,

Respondent and Cross-Appellant

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RESPONDENT AND CROSS-APPELLANT'S REPLY BRIEF

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GEORGE FEARING, WSBA # 12970  
**LEAVY, SCHULTZ, DAVIS &  
FEARING, P.S.**

2415 West Falls Avenue

Kennewick, WA 99336

(509) 736-1330

Attorneys for Richland School District

**JOHN C. BOLLIGER**

5205 W. Clearwater Ave.

Kennewick, WA 99336

(509) 734-8500

Attorney for Appellant Tiffani Williams

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## **I. ARGUMENT**

Tiffani Williams postulates staged facts in her argument that she complied with the pre-suit tort claim statute, RCW 4.96. She first contends that Richland School District sent to her a claim notice form. Nevertheless, at the time that the school district had no knowledge that Williams wished to sue, the school district sent Williams a “General Liability Loss Notice.” CP 55. The notice was intended for forwarding to the school district’s risk pool and not intended to be a substitute for a claim notice required by law, before filing suit. Tiffani Williams never asked for a claim notice form and thus the school district had no duty to supply one.

Tiffani Williams speculates that Richland School District Superintendent Richard Semler, once appointed by the school district to receive tort claims, resigned during her claim’s limitation period and that the school district did not appoint any one to replace him. No one has signed an affidavit supporting this assertion. On page 4 of her brief, Williams even qualifies this assertion by the phrase “on information and belief.”

Speculation is not sufficient to defeat a summary judgment motion. For testimony to be used in response to a motion, the facts must be admissible at trial and based upon personal knowledge. CR 56(e); **Overton v. Consolidated Ins. Co.**, 145 Wn.2d 417, 430, 1, 38 P.3d 322 (2002). Tiffani Williams does not even testify that at any time she sought to contact Richard Semler or any other representative of the Richland School District in order to file a tort claim.

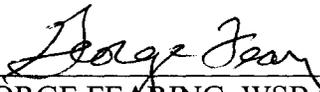
Tiffani Williams further asserts that her attorney's letters to the Richland School District's risk pool constitute second and third "iterations" of her claim notice. Those letters, however, also did not satisfy the loose requirements of RCW 4.96 and never were intended as a substitute for the statutory notice. Washington law has never considered a claimant attorney's letter to a municipality's insurer or risk pool to satisfy the dictates of the tort claim statute.

## **II. CONCLUSION**

As an alternate ground to affirming the dismissal of Tiffani Williams' suit, this court should rule that Tiffani Williams failed to comply with the tort claim statute, RCW 4.96.

DATED this 6<sup>th</sup> of October, 2010.

LEAVY, SCHULTZ, DAVIS & FEARING, P.S.  
Attorneys for Defendant Richland School District

By:   
GEORGE FEARING, WSBA #12970

**CERTIFICATE OF SERVICE**

I, Kristi Flyg, hereby certify that on the 8 day of October, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

- |                          |                  |                                |
|--------------------------|------------------|--------------------------------|
| <input type="checkbox"/> | Hand-delivered   | JOHN C. BOLLIGER               |
| <input type="checkbox"/> | First-Class Mail | <b>5205 W. Clearwater Ave.</b> |
| <input type="checkbox"/> | Overnight Mail   | Kennewick, WA 99336            |
| <input type="checkbox"/> | Facsimile        | 509-734-8500                   |

  
KRISTI FLYG  
of Leavy, Schultz, Davis & Fearing, P.S.