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No. 97630-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

W.H., et al.,

Plaintiffs,

vs.

OLYMPIA SCHOOL DISTRICT, et al.,

Defendants

PLAINTIFFS' REPLY BRIEF ON CERTIFIED QUESTIONS

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I. INTRODUCTION

The federal district court has asked the Court to answer two certified questions of law. These questions are: (1) whether, under RCW 49.60.215, the Washington Law Against Discrimination's (WLAD) public accommodation provisions, a school district may be strictly liable for employees' discriminatory acts and (2) if so, whether "discrimination" encompasses intentional sexual misconduct including physical abuse and assault? The answers to these questions are straightforward. The Court held in *Floeting v. Grp. Health Coop.*, 192 Wn.2d 848, 856, 434 P.3d 39 (2019) that employers are directly liable under RCW 49.60.215 for employees' discriminatory acts, including the intentional sexual misconduct at issue in that case. As the Court observed, RCW 49.60.215 is "not a negligence statute." *Floeting*, 192 Wn.2d at 856. No different than other statutory remedies commonly asserted with tort claims, such as 28 U.S.C. § 1983 or Title IX, WLAD provides another, distinct remedy to students who have been harmed—in this case discrimination in a place of public accommodation.

The Olympia School District takes the position that school buses, a fundamental instrument of public education, should be excluded from WLAD's protections against discrimination because a school bus is not a "public accommodation." But in Washington, as a matter of statutory law, school districts provide schools buses to several hundred thousand members of the public each year as a *necessary* part of the "basic education" mandated by our state constitution. That they do not serve

every single member of the general public at all times does not make them any less “public” than the many public accommodations statutorily and judicially recognized under WLAD. Restaurants and theaters are open only to paying customers. Hospitals and schools may restrict public access in certain times and circumstances. Yet WLAD recognizes these places as public accommodations and protects their patrons, patients, and students from discrimination. The District’s position that school bus passengers simply are not protected from discrimination on the basis of their race, gender, disability, sexual orientation, or other protected characteristics defy WLAD’s plain language and would undermine its central purpose: “to deter and eradicate discrimination” in places of public accommodation. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 246, 59 P.3d 655 (2002).

The District also argues that RCW 4.08.120, a statute simply authorizing tort lawsuits against public corporations such as school districts, “controls” over WLAD’s direct liability provisions for public accommodation discrimination and mandates that “a school district, like any other employer, may not be strictly liable for an employee’s intentional criminal conduct.” District’s Br. at 21. But RCW 4.08.120 contains *no language* indicating the legislature intended to preempt all other causes of action against school districts and other public corporations. And tort cases cited by the District neither hold nor suggest that RCW 4.08.120 provides an exclusive cause of action in tort or that the

legislature may not statutorily impose direct liability on public corporations for certain types of conduct, as is within its province to do. To the contrary, adopting the District's position would exempt *all* public corporations, such as counties, cities, and school districts, from WLAD's public accommodation antidiscrimination provisions despite the legislature's *express* intent for those provisions to apply to "any political or civil subdivisions of the state." RCW 49.60.040(19).

Further, the District concedes that WLAD's public accommodation provisions prohibit "physical assault or abuse" with the requisite discriminatory motivation, yet it contends they categorically exclude other "plainly criminal" intentional conduct such as sexual assault or abuse. District's Br. at 22, 28. But the District offers no basis in fact or law for such a distinction, particularly given that WLAD generally prohibits without limitation *any* discriminatory "act" in the public accommodation context.

The District further contends that WLAD's legislative history does not indicate the legislature specifically intended to subject employers to direct liability for "sexual abuse of children" when it amended WLAD's public accommodation provisions to include "sex" as a protected characteristic in 1985. But the legislature did not have to legislate with such surgical precision when it already had broadly defined the nature of public accommodation "discrimination" prohibited by WLAD; it already had imposed direct liability on political subdivisions of the state and other employers for such discrimination; and the Court already had recognized

that intentional, potentially criminal sexual misconduct was prohibited “sex” discrimination under WLAD’s workplace provisions. The only question is the one undiscussed by the District: does sexual abuse and assault fall within the range of conduct expressly recognized as “discriminatory” by WLAD’s plain language and the Court’s decisions? It does.

Finally, the District argues the facts rather than these certified questions of law, taking the position that the Court instead should dismiss Plaintiffs’ public accommodation discrimination claims by resolving a dispositive *question of fact*—whether Plaintiffs’ gender was a “substantial factor” motivating their sexual abuse by District employee Gary Shafer. The certified record shows that the federal court considered Plaintiffs’ WLAD claims based on the legal sufficiency of *allegations in the pleadings* and that the record contained Shafer’s own testimony denying that he had abused or had sexual interest in boys. The federal court concluded the “substantial factor” issue was “a question of fact not appropriate for certification” and not “ripe for a legal determination,” reserved the issue for further discovery, and declined to certify the fact question. Dkt. 80 at 7, 11. So it remains.

II. ARGUMENT

A. School Buses That Transport The Public’s Children To and From Public Schools Are Places of Public Accommodation Under WLAD

The District argues that the relevant “place of public accommodation” under WLAD specifically is a school bus (as Shafer’s

abuse of Plaintiffs occurred on one), which it contends is not a “public accommodation” because they are not open to *every* member of the general public. Although the issue generally is a question of fact, *Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 639, 911 P.2d 1319 (1996), school buses as a matter of law are public in nature and encompassed by WLAD’s public accommodation provisions.

1. School buses are “places of public accommodation” under WLAD

Washington law clearly defines the relationship between basic education; public schools; and student transportation, including school buses. Article IX, section 1 of the Washington State Constitution establishes the state’s “paramount duty” to “provide for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” Article IX, section 2 mandates that the legislature “provide for a general and uniform system of public schools,” including “common schools.” Together, these two provisions mandate the establishment of public schools and the provision of a “basic education” to the public. *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 519, 585 P.2d 71 (1978).

“Public schools” include “those common schools as referred to in Article IX of the state Constitution” as well as “those schools and institutions of learning having a curriculum below the college or university level . . . and maintained at public expense.” RCW 28A.150.010; **Appendix A.** Washington law requires that such schools be “open” and

their “basic educational program” “accessible” to all persons between the ages of five and twenty-one within a school district. RCW 28A.225.160(1); RCW 28A.150.220(5)(a); **Appendix B, C.**

In turn, RCW 28A.150.200(1) provides, “The program of basic education established under this chapter is deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution” **Appendix D.** The statute generally defines the “program of basic education” as “that which is necessary to provide the opportunity to develop the knowledge and skills necessary” to meet graduation requirements intended “to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship.” RCW 28A.150.200(2); **Appendix D.** And it *specifically* defines this “[b]asic education” as including “[t]ransportation and transportation services to and from school for eligible students as provided under RCW 28A.160.150 through 28A.160.180” RCW 28A.150.200(2)(d); **Appendix D.**¹ Thus, Washington law expressly establishes that transportation to and from school is part of the accessible basic education

¹ RCW 28A.160.160(1) provides:

“Eligible student” means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is outside the walk area for a student’s school, except if the student to be transported is disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies.

that school districts hold open to the public in compliance with Article IX, section 1's mandates. Thus, when a school bus conveys children to and from school, it serves the public.

Just as Washington law establishes that school buses are public in nature, WLAD's plain language establishes that they are "public accommodations." WLAD's non-exclusive list of "place[s] of public resort, accommodation, assemblage, or amusement" includes "any place . . . for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles" RCW 49.60.040(2); **Appendix E**. As the Court expressly has held, this language encompasses "public transit," including "buses on scheduled fixed routes." *Fell*, 128 Wn.2d at 618. RCW 49.60.040(2) also includes "any public . . . educational institution" and "schools of special instruction" as a public accommodation.² **Appendix E**. In contrast, the statute excludes only those places that are by their "nature distinctly private." *Id.* Citing RCW 49.60.020's mandate of liberal construction, the Court has expressly stated, "the Legislature mandated not only a liberal interpretation of the WLAD, it also intended a liberal reading of what constitutes a 'public accommodation.'" *Fraternal Order of Eagles*, 148 Wn.2d at 255.

² The District does not dispute that public schools are public accommodations under WLAD. Courts interpreting WLAD have recognized that they are. *Fraternal Order of Eagles*, 148 Wn.2d at 269 (public accommodations include "schools"); *B.L. by & through Landdeck v. Tonasket Sch. Dist.*, 2:18-CV-00085-SMJ, 2018 WL 2670031, at *3 (E.D. Wash. June 4, 2018) ("[T]he WLAD identifies public schools as places of public accommodation").

Especially given the mandate of liberal construction, it is beyond reasonable dispute that, as a matter of law, public school buses are places of public accommodation. They are by their very nature “public.” They are open to the public for the conveyance of children attending public schools as part of the constitutionally mandated basic education offered to the public. They operate on scheduled, fixed routes. *See* WAC 392-145-011(2) (students “scheduled to ride the school bus”); 145-011(5) (requiring school districts to “design bus routes”); **Appendix F**. And within the same breath the legislature included “public educational institutions,” “schools of special instruction,” and “any place . . . for public conveyance or transportation” as public accommodations. Reading the plain language of these related provisions together, the legislature clearly intended to include school buses transporting the public’s children to and from public schools as “public accommodations” themselves. *See King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000) (court determines plain meaning by considering statutory provisions in relation to each other).

2. Like other public accommodations, the fact that school buses serve a subset of the general public does not change their nature from “public” to “distinctly private”

The District argues that because private school students and certain other members of the general public may ride school buses only under certain circumstances, they are not “public accommodations.” District’s Br. at 7. But this merely underscores their public nature. Public schools are held open to *the public* for their children to attend, and transportation

to and from school via school buses is provided to the public as a part of a child's basic education. Thus, school buses are not limited to a "distinctly private" ridership, such as an employer's shuttle service provided only for employees.

Moreover, the District concedes that "city buses" *are* a public accommodation. District's Br. at 7. But "city buses" and other similar public transit are primarily restricted to fare-paying passengers; not just anyone may, at any time, ride them. Yet the District admits such buses are public accommodations despite not being open to all members of the general public.

Like public transit and school buses, the many other examples of public accommodations recognized under WLAD confirm that a place does not cease to be a "public accommodation" simply because it is not open to every single member of the general public all of the time. *See Fell*, 128 Wn.2d at 638 n. 24 (citing previous cases holding restaurants, movie theaters, and weight control clinics are places of public accommodation). Although restaurants, movie theaters, and weight control clinics hold themselves out for business to all members of the general public, they are open only to paying customers. *See, e.g., Anderson v. Pantages Theater Co.*, 114 Wash. 2d, 27, 194 P. 813 (1921) (holding that theater was a public accommodation required to admit "every one who may apply and be willing to pay the price of a ticket" regardless of their "race, creed, or color").

Other states interpreting civil rights statutes similar to WLAD have

rejected arguments that a place of accommodation is not public because it is not “accessible by *all* members of the public.” *Doe ex rel. Subia v. Kansas City, Missouri Sch. Dist.*, 372 S.W.3d 43, 49 (Mo. Ct. App. 2012) (emphasis in original). In *Subia*, for example, the Missouri Court of Appeals considered whether an elementary school building was “public” within the meaning of the Missouri Human Rights Act (MHRA). 372 S.W.3d at 49. The *Subia* court acknowledged that “Missouri law contains limits on students’ access to public schools based upon age, residency, and immunization requirements, and school districts restrict the general populace’s access to school buildings to protect the safety and welfare of students.” *Id.*

However, *Subia* also acknowledged the ordinary dictionary meanings of the term “public”:

“The word ‘public’ conveys several meanings. While the word ‘public’ can refer to the entire populace, it can also refer to ‘[a] particular body or section of the people; often, . . . a clientele . . .’ *Webster’s New Int’l Dictionary* 2005 (2d Ed.1952). It can also refer to ‘a group of people distinguished by common interests or characteristics.’ *Webster’s Third New Int’l Dictionary* 1836 (1993). ‘In another sense the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few.’ *Black’s Law Dictionary* 1227 (6th Ed.1990).”

Id. (quoting *J.B. Vending Co., Inc. v. Dir. of Revenue*, 54 S.W.3d 183, 186 (Mo. 2001)). It further reasoned that these definitions were consistent with the idea that ““an entity can be said to serve the public even if it

serves only a subset or segment of the public and is subject to regulation on that basis.” *Subia*, 54 S.W.3d at 49 (quoting *J.B. Vending*, 54 S.W.3d at 186-87).

Accordingly, *Subia* concluded that limiting the phrase “public” to mean “accessible by *all* members of the populace would be contrary to the legislature’s intent and would effectively nullify the prohibition against discrimination in public accommodations.” 54 S.W.3d at 49-50 (emphasis in original). It reasoned:

Many of the places of public accommodation listed [in the MHRA] limit access to their facilities to a subset of the general population. Restaurants restrict minors from access to areas in which alcoholic beverages are served and exclude persons who do not comply with dress codes. Resorts, movie theaters, concert halls, and amusement parks impose age and height restrictions on patrons. Nevertheless, the legislature has expressly deemed these facilities to be ‘places of public accommodation.’

Id. at 50.

Thus, *Subia* held that the fact that “access to the school is subject to state law and the School District’s restrictions does not defeat the public character of the school.” *Id.* Instead, it observed that, consistent with the Missouri Constitution’s mandate of “‘free public schools for the gratuitous instruction of all persons’” of the appropriate age, the elementary school “holds itself out” to the public “as a facility that provides such gratuitous instruction” and, thus, was a public accommodation. *Id.* (quoting MO CONST. art IX, sec. 1(a))³

³ *Subia* is not alone in rejecting arguments that “restricted access” renders an accommodation private instead of public under similar civil rights statutes. *Martin v.*

As in *Subia*, here Washington law mandates the establishment of public schools and the provision of a “basic education” to the public. *Seattle Sch. Dist. No. 1 of King Cty.*, 90 Wn.2d at 519. School districts provide transportation of students to and from school, such as school buses, as part of the basic education offered to the public. And although school buses primarily serve a subset of the general public—students

PGA Tour, Inc., 204 F.3d 994, 997-99 (9th Cir. 2000), *aff’d on other grounds*, 532 U.S. 661, 121 S. Ct. 1879, 149 L. Ed. 2d 904 (2001) (holding competitors’ area of golf course not open to the general public was a public accommodation under the ADA because both the golf course itself and qualification for the golf tournament at issue were open to “[a]ny member of the public” who paid the entry fee and supplied required letters of recommendation); *Independent Living Resources v. Oregon Arena Corp.*, 982 F. Supp. 698, 759-60, (D. Or. 1997), *overruled on other grounds by Miller v. Speedway Corp.*, 536 F.3d 1020 (9th Cir. 2008) (holding executive suites at a public arena “licensed by businesses as a place for entertaining clients and other important guests” were an ADA public accommodation despite not being accessible to the general public, reasoning “a facility that specializes in hosting wedding receptions and private parties may be open only to invitees of the bride and groom, yet it clearly qualifies as a public accommodation”; *Wilkins-Jones v. Cty. of Alameda*, 859 F. Supp. 2d 1039, 1053 (N.D. Cal. 2012) (quoting *Carolyn v. Orange Park Cmty. Assn.*, 177 Cal. App. 4th 1090, 1104, 99 Cal. Rptr. 3d 699, 710 (2009)) (holding a county jail was a public accommodation under the California Disabled Persons Act, Cal. Civ. Code § 54, reasoning a jail was “more like schools and hospitals contemplated under the ADA, which also restrict public access in certain times and circumstances but are nonetheless ‘designed and intended to provide services, goods, privileges, and advantages to members of the public’”).

These interpretations of the term “public” are consistent with Washington courts’ interpretations of similar statutory terms. In *Courtney v. Washington Utilities & Transportation Comm’n*, 3 Wn. App. 2d 167, 181-82, *review denied*, 191 Wn.2d 1002, 422 P.3d 911 (2018), the Court of Appeals held that the statutory term “for the public use” extended to “subsets of the public.” It reasoned:

“No carrier serves all the public. His customers are limited by place, requirements, ability to pay, and other facts. But the public generally is free to go to hotels if it can afford to, as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab. . . . The service affects so considerable a fraction of the public that it is public in the same sense in which any other may be called so. *The public does not mean everybody all the time.*”

Courtney, 3 Wn. App. 2d at 182 (quoting *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 255, 36 S. Ct. 583, 60 L. Ed. 984 (1916) (emphasis in original)).

Similarly, public schools, school buses, and the other public accommodations listed in RCW 49.60.040(2) do not serve “everybody all of the time,” i.e., every member of the general public. But they do hold themselves out to the public and, in so doing, serve significant subsets of the public, whether children enrolled in public schools or paying customers. Accordingly, they are “public” accommodations.

whose parents accept the open invitation to the public to enroll—that makes them no less “public” than public schools themselves, restaurants, theaters, and other recognized public accommodations that similarly restrict access or service to subsets of the public.⁴

Conversely, adopting the District’s position that places are not public accommodations simply because they are not open to every member of the general public would critically damage WLAD’s prohibition against discrimination in public accommodations. Restaurants could claim they “do not sell to the public because they serve only persons with reservations, or sports arena concession stand operators [could assert] they do not sell to the public because they serve only those with tickets to the arena’s event.” *Subia*, 372 S.W.3d at 49. The Court already has held that interpretations allowing entities to easily escape WLAD’s public accommodation provisions simply by labeling themselves “not open to the general public” are contrary to legislative intent. *See Fraternal Order of Eagles*, 148 Wn.2d at 255 (interpreting WLAD categorically to exclude groups “merely designating themselves” as private “fraternal organizations” is “inconsistent with the purpose of the WLAD”). Instead, consistent with WLAD’s plain language, its underlying purposes, and school buses’ public nature as a matter of law, they are places of public

⁴ This “subset” of the public is quite significant. The Washington Office of Superintendent of Public Instruction’s (OSPI) publicly available student counts for public school bus ridership show that the state’s school districts averaged 362,382 “basic riders” and 34,610 “special program” riders in the 2018-2019 school year. *Student Detail Report*, <https://www.k12.wa.us/sites/default/files/public/transportation/stars/studentdetailreport.xlsx> (last visited December 23, 2019); **Appendix G**.

accommodation serving a significant subset of the public.⁵

3. Interpreting WLAD’s public accommodation provisions to exclude school buses would lead to absurd results

Finally, adopting the District’s position that WLAD’s public accommodation provisions do not encompass school buses would lead to impermissible, absurd results. For example, a school bus driver could harass a student based on race, gender, disability, sexual orientation, or any other characteristic protected under WLAD to the point that the student stopped riding the bus and attending school. Or such a bus driver could choose not to make stops in communities of color. These actions undeniably would deprive students of the “full enjoyment of” the school

⁵ Even if the Court concludes that school buses themselves are not places of public accommodation, RCW 49.60.040(14) provides that “full enjoyment” of “any place of public resort, accommodation, assemblage, or amusement” encompasses the right to enjoy their “advantages, facilities, or privileges” free from discriminatory treatment. Under the ordinary dictionary definitions of those terms, school buses are an “advantage” or “facility” of public schools. See *Fraternal Order of Eagles*, 148 Wn.2d at 239 (court may use standard dictionary definitions to determine meaning of undefined statutory terms).

First, *Webster’s* defines “advantage” as “a benefit, profit, or gain of any kind.” Thus, school buses are an “advantage” of public schools. They are provided by public schools to students who enroll in them as a benefit of their constitutionally mandated basic education. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at 30 (3d. ed. 2002).

Second, *Webster’s* defines “facility” as “something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end.” *Id.* at 812-13. School buses are built and constructed for the “particular function” or “particular end” of transporting children to and from public schools. See RCW 46.61.380 (mandating the state “adopt and enforce rules . . . to govern the design, marking, and mode of operation of school buses”); WAC 392-143-015 (incorporating by reference the Washington state school bus specifications manual into school bus design requirements); *Washington State School Bus Specifications*, available at <https://www.k12.wa.us/sites/default/files/public/transportation/pubdocs/schoolbusspecmanual.pdf> (last revised September 2018) (listing design specifications for school buses and defining them as “every vehicle . . . regularly used to transport students to and from school or in connection with school activities”); **Appendix H**. Accordingly, they are a “facility” of public schools.

as protected under WLAD. RCW 49.60.030(1)(b); RCW 49.60.040(14).⁶ But under the District’s interpretation, WLAD simply does not protect students from any form of prohibited discrimination while on school buses. Such an interpretation contravenes this Court’s repeated holdings that WLAD’s purpose—”to deter and eradicate discrimination” in places of public accommodation, including schools—is a “priority of the highest order” and constitutes an absurd result. *Fraternal Order of Eagles*, 148 Wn.2d at 246.

B. The Legislature’s Express Imposition of Direct Liability for Public Accommodation Discrimination on Political Subdivisions of the State Does Not Conflict With RCW 4.08.120’s Authorization of Tort Lawsuits Against Public Corporations

The District next argues that school districts cannot be directly liable under RCW 49.60.215 for public accommodation discrimination committed by their employees because it conflicts with another statute, RCW 4.08.120, that the District claims is “controlling.” District’s Br. at 13. This is so, the District contends, because under that statute, school districts are “subject to suit *only* for their tortious acts and omissions” and only under traditional tort principles, such as vicarious liability and

⁶ Washington’s OSPI holds similar views regarding the importance of legal protections from discrimination for students on school buses. In its “School Bus Driver Handbook” provided to every school bus driver of the state, it reminds bus drivers that Title IX prohibits sexual harassment (including “physical sexual harassment”) of students as a form of “sex discrimination” and states: “The student may suffer from a loss of confidence or self-esteem, find it hard to study and pay attention, and dread or even avoid going to school if they anticipate harassment.” *School Bus Driver Handbook*, at 50, available at <https://www.k12.wa.us/sites/default/files/public/transportation/pubdocs/sbdhandbook.pdf> (last revised March 2019); **Appendix I**.

foreseeability. District’s Br. at 10 (emphasis added).⁷

But the District erroneously adds language to RCW 4.08.120 in order to manufacture a “conflict” with RCW 49.60.215. RCW 4.08.120 provides:

An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

The District urges the Court to read into the statute a term that does not exist—“only”—but the law does not permit adding terms to the statute. *See Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Moreover, reading this term into the statute would lead to the unacceptable result of *all* public corporations under RCW 4.08.110—counties, incorporated towns, school districts, or any “other public corporation of like character”—being exclusively liable in tort and exempt from liability under other causes of action, such as WLAD’s public accommodation provisions.

Instead, in 1953, the legislature authorized tort lawsuits against public corporations for acts or omissions under RCW 4.08.120. That is unremarkable, as “[i]t is the province of the legislature to establish

⁷ However, the District later concedes that “physical assault or abuse could give rise to a claim under RCW 49.60.215.” District’s Br. at 28. Of course, assault and battery are both well-recognized torts, as well as crimes. Yet the District concedes employers may be liable under RCW 49.60.215, a direct liability statute with no regard for tort concepts such as scope of employment or foreseeability. *Floeting*, 192 Wn.2d at 856-57.

standards of conduct and attendant rules of liability.” *Floeting*, 192 Wn.2d at 856. As was also its prerogative, in 1957 the legislature authorized direct liability against any “person”—including “any political or civil subdivision of the state” such as school districts—for conduct constituting public accommodation discrimination. LAWS of 1957, ch. 37, §§ 4, 14; **Appendix J**. The Court must presume that the legislature knew of RCW 4.08.120, yet it plainly and expressly imposed direct liability on all political and civil subdivisions of the state under WLAD’s public accommodation provisions anyway. *See Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 850, 383 P.3d 492 (2016) (courts must presume legislature enacted laws with full knowledge of existing laws).

Nothing in the plain language of either statute indicates that one should apply to the exclusion of the other. *See Ralph v. Weyerhaeuser Co.*, 187 Wn.2d 326, 339-40, 386 P.3d 721 (2016).⁸ Rather, the statutes are easily harmonized under the unremarkable proposition that where misconduct constitutes both a tort and public accommodation discrimination prohibited under WLAD, the statutes complement each other and provide separate, nonexclusive causes of action.⁹ *See Waste*

⁸ Essentially, the District argues that RCW 4.08.120 establishes an exclusive cause of action against public corporations for acts or omissions that constitute a tort. But nothing in the statute indicates that it should operate to the exclusion of other causes of action. Such an exclusive cause of action would be possible if that were the legislature’s intent. *See* RCW 76.04.760(1), .760(4) (establishing “the exclusive cause of action for property damage to public or private forested lands” resulting from “negligence or a higher degree of fault”; *Ralph*, 187 Wn.2d at 340 n. 5 (existence of other expressly exclusive venue statutes demonstrated legislature did not intend exclusivity for venue statute at issue). Yet the legislature did not provide such exclusivity language in RCW 4.08.120.

⁹ Without citation to supporting authority, the District claims that “Plaintiffs

Mgmt. of Seattle, Inc. v. Utils. & Transp. Com'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994) (courts “will read statutes as complementary, rather than in conflict”); *Anderson v. Dep’t of Corrections*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007) (courts reconcile statutes on the same subject matter “so as to give effect to each provision”). There simply is no “conflict” between the statutes under the plain language actually used by the legislature.¹⁰

C. As the Court Observed in *Floeting*, Washington’s Common Law Principles of Tort Liability are Inapplicable to Direct Liability Claims under RCW 49.60.215

cannot have both tort claims and WLAD strict liability claims for exactly the same conduct, because [u]nder strict liability, tort is superfluous.” District’s Br. at 26. But as the District admits, the focus of Plaintiffs’ WLAD public accommodation claims is on demonstrating the various *Fell* factors, such as whether their protected characteristic was a “substantial factor” motivating their discrimination, as well as demonstrating that the alleged misconduct was objectively discriminatory. See *Floeting*, 192 Wn.2d at 853-54, 861. In contrast, the focus of Plaintiffs’ negligence claims is whether the District breached duties owed to Plaintiffs and the foreseeability of their harm.

Under such circumstances, the Court has recognized that direct liability and tort claims are not mutually exclusive. See *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 356-57, 197 P.3d 127 (2008) (recognizing “strict liability as a theory that may or may not be asserted alongside negligence in the failure to warn context” in product liability cases because “in a negligence action, the focus is on the conduct of the defendant; in a strict liability action, the focus is on the product itself and the reasonable expectations of the user.” Phrased differently, such causes of action are “separate, nonexclusive theories equally available to a plaintiff”; a jury could reject a strict liability theory but still find negligence. *Brown for Hejna v. Yamaha Motor Corp., U.S.A.*, 38 Wn. App. 914, 917, 691 P.2d 577 (1984).

The same is true here. A jury could find that Plaintiffs’ gender was not a substantial factor motivating their alleged discrimination but nonetheless find the District breached a duty resulting in foreseeable harm to them. Conversely, a jury could find the District liable under both theories, and a reviewing court could not “infer” one finding necessarily implied the other, given the distinct, separate elements of each claim. They are not mutually exclusive, nor does the WLAD claim render tort claims superfluous.

¹⁰ Even assuming *arguendo* the existence of an apparent conflict between the statutes as applied to conduct both tortious and discriminatory under WLAD, “courts generally give preference to the more specific and more recently enacted statute.” *Whatcom Cty. v. Hirst*, 186 Wn.2d 648, 682, 381 P.3d 1 (2016) (quoting *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000)). Here, where the alleged misconduct is generally tortious but specifically discriminatory, RCW 49.60.215 would control as the more specific and more recently enacted statute.

Next, the District cites cases stating the common law tort principles that employers generally are not liable for the unforeseeable intentional or criminal acts of employees outside the scope of employment absent a special relationship with the victim or the employee. District's Br. at 10-21. The District contends that because these cases were decided before and after the legislature added "sex" to RCW 49.60.215 as a protected characteristic, they suggest the legislature did not intend to impose direct liability on school districts under WLAD's public accommodations for such conduct. *Id.* at 13.

But it is unremarkable that those cases applied only tort principles of liability to such conduct, as *not a single one of them* addressed a WLAD public accommodation claim. Nor did they, as the District implies, state that RCW 4.08.120 provides an exclusive, tort cause of action against school districts for such conduct. As such, they are inapplicable to the question of whether the District may be strictly liable under WLAD for public accommodation discrimination in the form of sexual abuse. *See Floeting*, 192 Wn.2d at 856-57 (stating "RCW 49.60.215 is not a negligence statute where foreseeability matters" and rejecting application of "an agency or vicarious liability lens"). And they would not be "overturned" by the Court answering "yes" to that question. These proceedings simply do not involve questions of a school district's scope of liability under a negligence or other tort cause of action.¹¹

¹¹ Relatedly, the District argues that school districts "have the right to know and rely" on these common law tort principles of liability. District's Br. at 26. But "[a] person has no vested interest in any rule of the common law." *Shea v. Olson*, 185 Wash.

D. The Legislature Added “Sex” to RCW 49.60.215 in the Existing Context of its Imposition of Direct Liability and Judicial Interpretations Recognizing Intentional, Potentially Criminal Sexual Misconduct as Gender-Based Discrimination Prohibited under WLAD

The District contends that there is no “evidence” in WLAD’s legislative history that it specifically intended to prohibit “sexual abuse of children” as a form of discrimination when it added “sex” as a protected characteristic to RCW 49.60.215 in 1985. District’s Br. at 15. Thus, it argues, there was no “express intent” by the legislature to “change the law” regarding public corporations’ liability for the intentional or criminal acts of employees under tort principles. *Id.*

But the District ignores the legislature’s multiple expressions of intent through its previous enactments imposing direct liability on

143, 156, 53 P.2d 615, *adhered to on reh’g en banc*, 186 Wash. 700, 59 P.2d 1183 (1936). And school districts long have recognized the possibility of directly liability under RCW 49.60.215 for employees’ discriminatory conduct. *See Evergreen Sch. Dist. No. 114 v. Washington State Human Rights Comm’n, on Behalf of Johnson*, 39 Wn. App. 763, 771 n. 3, 695 P.2d 999 (1985) (declining to reach issue raised by school district of whether statute imposes “strict liability”).

The District also makes a passing claim that school districts might be unable to obtain liability insurance if they are subject to “strict” liability under WLAD. District’s Br. at 22. Even if the Court were inclined to consider this passing, conclusory assertion, the Court has observed that liability under RCW 49.60.215 is “strict” in the sense that “it does not allow an employer to escape liability by asserting a lack of fault.” *Floeting*, 192 Wn.2d at 859. But employers have multiple defenses available through disproving various elements of a public accommodation claim. *Id.* at 861. The same is true of other statutory causes of action against school districts, such as Title IX; school districts may defend by disproving various elements of such claims. Yet, despite the existence of such causes of action, school districts remain insured.

Finally, and perhaps most importantly, “[t]he wisdom of legislation is not justiciable.” *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 642, 771 P.2d 711, 715, *amended*, 780 P.2d 260 (1989). The Court has observed that the legislature made a decision to impose direct liability on employers “to encourage employers to focus on preventing discrimination, rather than merely punishing employees when it occurs.” *Floeting*, 192 Wn.2d at 861. The argument that other policy considerations such as school districts’ insurance premiums should prevail is one for the legislature, not the courts.

employers for public accommodation discrimination, as well as judicial interpretations of the term “sex” under WLAD. By the time it added “sex” as a protected characteristic in 1985, the legislature already had imposed direct liability for public accommodation discrimination on political subdivisions of the state, such as school districts. LAWS of 1957, ch. 37, §§ 4, 14; **Appendix J**. It also already had defined prohibited discriminatory conduct as including conduct causing persons with protected characteristics “to be treated as not welcome, accepted, desired, or solicited.” *Id.* And the Court already had held that intentional, potentially criminal “physical conduct” of a “sexual nature” constituted discrimination on the basis of “sex” under WLAD’s workplace discrimination provisions. *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 402, 407, 693 P.2d 708 (1985) (opinion dated January 10, 1985).

Accordingly, the law presumes that the legislature knew all these things when it amended WLAD’s public accommodation provisions to prohibit discrimination on the basis of “sex.” LAWS of 1985, ch. 203, § 1 (passed by the Senate March 19, 1985; passed by the House April 16, 1985; signed by the Governor May 7, 1985); **Appendix K**. Thus, the Court must presume that the legislature intended to impose direct liability for gender-based public accommodation discrimination consistent with WLAD’s existing statutory provisions and existing judicial interpretations of the term “sex” under WLAD. *See T.A.W.*, 186 Wn.2d at 850; *State v. Bobic*, 140 Wn.2d 250, 264, 996 P.2d 610 (2000) (“absent an indication [legislature] intended to overrule a particular interpretation, amendments

are presumed to be consistent with previous judicial decisions”); *State v. Keller*, 98 Wn. App. 381, 383, 990 P.2d 423, (1999), *aff’d*, 143 Wn.2d 267, 19 P.3d 1030 (2001) (courts must presume legislature intended same meaning for same term used in related statutes). That intent necessarily included direct liability for any gender-based conduct that made a person feel “not welcome, accepted, desired, or not solicited,” including sexual harassment and other intentional, potentially criminal sexual misconduct. Such conduct, when motivated by the target’s gender, unquestionably is discrimination under WLAD.

E. The Federal District Court Certifies Questions of Law, Not Questions of Fact, for Answers by This Court

Finally, the District invites the Court to hold that Plaintiffs “failed” to demonstrate that their gender was a “substantial factor” in their abuse because the District represents it was “undisputed” before the federal court that Shafer sexually abused boys as well as girls, rendering this a case of age discrimination, not gender discrimination.¹² But the District ignores both the case’s posture and the record before the federal court.

The federal court allowed Plaintiffs’ WLAD claims to proceed under Fed. R. Civ. Pr. 12(b)(6) standards, a test of “*legal*

¹² The District also argues that RCW 49.60.215 “does not protect children” because it does not include age as a protected class, and WLAD’s workplace antidiscrimination statutes only protect people over 40. District’s Br. at 27. But RCW 49.60.215 does not exclude anyone, of any age, from its protections against discrimination based on some other, protected characteristic. And interpreting it to exclude individuals based on their young age would impermissibly nullify many of its terms. For example, WLAD prohibits discrimination in schools, and students are minors.

insufficiency.”¹³ Dkt. 74 at 8 (emphasis added) (quoting *JP Morgan Chase Bank, N.A. v. KB Home*, 740 F. Supp. 2d 1192, 1197 (D. Nev. 2010) (citation omitted)). Plaintiffs alleged that Shafer targeted, groomed, and sexually abused girls and that Plaintiffs’ gender was a “substantial factor” in their abuse. Dkt. 75 at 2-5 (¶¶ 2-5, 9, 11); 10-11 (¶ 28); 12-13 (¶¶ 32-33); 14-15 (¶¶ 36-37); 24 (¶ 48); 28 (¶ 57); 32 (¶ 68). The federal court ruled these allegations were legally sufficient, recognized that discovery was ongoing in the case, and reserved any rejection of Plaintiffs’ WLAD claims for evidentiary phases of the case. It did so not only as required under Rule 12(b)(6) but also because the “substantial factor” element is a factual question reserved for a trier of fact. *Fell*, 128 Wn.2d at 641. Yet the District functionally asks this Court to grant summary judgment on this dispositive factual question in the first instance without the additional discovery contemplated as necessary by the federal court.

Moreover, the District attempts to entice the Court into reaching the “substantial factor” element based on its representations that it was “undisputed” before the federal court that Shafer also abused male students. But the District bases these representations on allegations in

¹³ Like Washington’s civil rules, in determining the legal sufficiency of a claim on the pleadings, federal courts must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them, and must construe the complaint in the light most favorable to the plaintiff. *N.L. Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). So long as the plaintiff alleges facts to support a theory that is not facially implausible, federal courts reserve any rejection of claims for later stages of the proceedings when the plaintiff’s case can be rejected on evidentiary grounds. *Balderas v. Countrywide Bank, N.A.*, 664 F.3d 787, 791 (9th Cir. 2011).

Plaintiffs' complaint that Shafer engaged in childlike game-playing with male students, not allegations of sexual molestation, as well as the federal court's order expressly finding that whether Plaintiffs' gender was a "substantial factor" in their discrimination "*remains a factual question* at this point in the proceedings." District's Br. at 6 (citing ER 13, 263) (emphasis added). The record contains no support for the District's assertions of these "undisputed" facts.

Finally, the record flatly contradicts the District's representations. The certified record contained Shafer's own deposition testimony unequivocally denying abuse of boys or sexual interest in them. Dkt. 71 at 7-9; Dkt. 72 at 114, 120-21. Because the record disputed the District's representation that Plaintiffs' gender was not a "substantial factor" in their abuse because Shafer also abused boys, the federal court properly concluded that the issue was "a question of fact not appropriate for certification" and was not "ripe for a legal determination." Dkt. 80 at 7, 11. *See Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612, 615, 416 P.3d 1205 (2018) (refusing in certified question proceeding to reach issue that was "a factual dispute beyond the scope of the certified question presented"); *Travelers Cas. & Sur. Co. v. Washington Tr. Bank*, 186 Wn.2d 921, 931, 383 P.3d 512 (2016) (declining to answer certified question as formulated because it asked the Court "to make factual determinations"). The Court must also reject the District's improper invitation to decide a disputed, dispositive factual issue in these proceedings on certified questions of

law.¹⁴

III. CONCLUSION

The Court should answer “yes” to both certified questions. As a necessary part of doing so, the Court should hold that, as a matter of law, school buses are encompassed by WLAD’s public accommodation provisions.

RESPECTFULLY SUBMITTED this 23rd day of December, 2019.

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¹⁴ In urging the Court to reach this factual issue, the District ignores well-established Washington law regarding WLAD when, citing the “because of” language in RCW 49.60.010, *Glasgow*, and other WLAD workplace cases, it argues that Plaintiffs must demonstrate that they would not have been abused “but for” their gender in order to meet the “substantial factor” element. District’s Br. at 6-7. But subsequent to *Glasgow*, the Court examined the “because of” language in RCW 49.60.180 and expressly held that “substantial factor” does not mean that a plaintiff’s protected characteristic was the “determining factor,” “sole factor,” or “but for” cause of workplace discrimination. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014) (citing *Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 310-11, 898 P.2d 284 (1995)). Instead, a plaintiff must show only that their protected characteristic “was a significant motivating factor” in the discriminatory action. *Scrivener*, 181 Wn.2d at 444 (citing *Mackay*, 127 Wn.2d at 311). And the Court has adopted the same “substantial factor” standards for WLAD public accommodation discrimination claims. *Fell*, 128 Wn.2d at 640. Accordingly, Plaintiffs are not required to demonstrate that their gender—as opposed to their age—was the “sole” or “determining” factor or “but for” cause of their abuse.

CERTIFICATE OF SERVICE

Sarah Awes, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on December 23, 2019, I delivered via Email a true and correct copy of the above document, directed to:

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DATED this 23rd day of December 2019.

/s/ Sarah Awes
Sarah Awes
Legal Assistant

APPENDIX A

RCW 28A.150.010**Public schools.**

Public schools means the common schools as referred to in Article IX of the state Constitution, charter schools established under chapter **28A.710** RCW, and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense.

[**2016 c 241 § 131**. Prior: 2013 c 2 § 301 (Initiative Measure No. 1240, approved November 6, 2012); **1969 ex.s. c 223 § 28A.01.055**; (2004 c 22 § 24, Referendum Measure No. 55 failed to become law). Formerly RCW **28A.01.055**.]

NOTES:

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW **28A.710.900** and **28A.710.901**.

APPENDIX B

RCW 28A.225.160**Qualification for admission to district's schools—Fees for preadmission screening.**

(1) Except as provided in subsection (2) of this section and otherwise provided by law, it is the general policy of the state that the common schools shall be open to the admission of all persons who are five years of age and less than twenty-one years residing in that school district. Except as otherwise provided by law or rules adopted by the superintendent of public instruction, districts may establish uniform entry qualifications, including but not limited to birthdate requirements, for admission to kindergarten and first grade programs of the common schools. Such rules may provide for exceptions based upon the ability, or the need, or both, of an individual student. For the purpose of complying with any rule adopted by the superintendent of public instruction that authorizes a preadmission screening process as a prerequisite to granting exceptions to the uniform entry qualifications, a school district may collect fees to cover expenses incurred in the administration of any preadmission screening process: PROVIDED, That in so establishing such fee or fees, the district shall adopt rules for waiving and reducing such fees in the cases of those persons whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees.

(2) A student who meets the definition of a child of a military family in transition under Article II of RCW **28A.705.010** shall be permitted to continue enrollment at the grade level in the common schools commensurate with the grade level of the student when attending school in the sending state as defined in Article II of RCW **28A.705.010**, regardless of age or birthdate requirements.

[**2009 c 380 § 3**; **2006 c 263 § 703**; **1999 c 348 § 5**; **1986 c 166 § 1**; **1979 ex.s. c 250 § 4**; **1977 ex.s. c 359 § 14**; **1969 ex.s. c 223 § 28A.58.190**. Prior: 1909 c 97 p 261 § 1, part; RRS § 4680, part; prior: 1897 c 118 § 64, part; 1890 p 371 § 44, part. Formerly RCW **28A.58.190**, **28.58.190** part, **28.01.060**.]

NOTES:

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW **28A.150.230**.

Intent—1999 c 348: See note following RCW **28A.205.010**.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW **28A.150.220**.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW **28A.150.200**.

*Program of basic education, RCW **28A.225.160** as part of: RCW **28A.150.200**.*

APPENDIX C

RCW 28A.150.220**Basic education—Minimum instructional requirements—Program accessibility—Rules.**

(1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW **28A.150.210**, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased beginning in the 2015-16 school year to at least one thousand eighty instructional hours for students enrolled in grades nine through twelve and at least one thousand instructional hours for students in grades one through eight, all of which may be calculated by a school district using a district-wide annual average of instructional hours over grades one through twelve; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW **28A.150.315**.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW **28A.655.070**;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, beginning with the graduating class of 2019 or as otherwise provided in RCW **28A.230.090**. Course distribution requirements may be established by the state board of education under RCW **28A.230.090**;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for students who are not meeting academic standards through the learning assistance program under RCW **28A.165.005** through **28A.165.065**;

(e) Supplemental instruction and services for eligible and enrolled students and exited students whose primary language is other than English through the transitional bilingual instruction program under RCW **28A.180.010** through **28A.180.080**;

(f) The opportunity for an appropriate education at public expense as defined by RCW **28A.155.020** for all eligible students with disabilities as defined in RCW **28A.155.020**; and

(g) Programs for highly capable students under RCW **28A.185.010** through **28A.185.030**.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5)(a) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW **28A.225.160**, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW **28A.150.315**.

(b) Schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory.

(c) In the case of students who are graduating from high school, a school district may schedule the last five school days of the one hundred eighty day school year for noninstructional purposes including, but not limited to, the observance of graduation and early release from school upon the request of a student. All such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW **28A.150.250** and **28A.150.260**. Any hours scheduled by a school district for noninstructional purposes during the last five school days for such students shall count toward the instructional hours requirement in subsection (2)(a) of this section.

(6) Subject to RCW **28A.150.276**, nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW **28A.150.250** and **28A.150.260**, and such related supplemental program approval requirements as the state board may establish.

[**2017 3rd sp.s. c 13 § 506**; **2014 c 217 § 201**; **2013 2nd sp.s. c 9 § 2**; **2013 c 323 § 2**; **2011 1st sp.s. c 27 § 1**; **2009 c 548 § 104**; **1993 c 371 § 2**; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); **1992 c 141 § 503**; **1990 c 33 § 105**; **1982 c 158 § 1**; **1979 ex.s. c 250 § 1**; **1977 ex.s. c 359 § 3**. Formerly RCW **28A.58.754**.]

NOTES:

Intent—2017 3rd sp.s. c 13: See note following RCW **28A.150.410**.

Finding—Intent—2014 c 217: "The legislature recognizes that preparing students to be successful in postsecondary education, gainful employment, and citizenship requires increased rigor and achievement, including attaining a meaningful high school diploma with the opportunity to earn twenty-four credits. The legislature finds that an investment was made in the 2013-2015 omnibus appropriations act to implement an increase in instructional hours in the 2014-15 school year. School districts informed the legislature that the funding as provided in the 2013-2015 omnibus appropriations act would result in only a few minutes being added onto each class period and would not result in a meaningful increase in instruction that would have the positive impact on student learning that the legislature expects. The school districts suggested that it would be a better educational policy to use the funds to implement the requirement of twenty-four credits for high school graduation, which will result in a meaningful increase of instructional hours. Based on input from school districts across the state, the legislature recognizes the need to provide flexibility for school districts to implement the increase in instructional hours while still moving towards an increase in the high school graduation requirements. Therefore, the legislature intends to shift the focus and intent of the investments from compliance with the minimum instructional hours offering to assisting school districts to provide an opportunity for students to earn twenty-four credits for high school graduation and obtain a meaningful diploma, beginning with the graduating class of 2019, with the opportunity for school districts to request a waiver for up to two years." [**2014 c 217 § 1**.]

Intent—2013 2nd sp.s. c 9: "The legislature intends to fund a plan to carry out the reforms enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and to make the statutory changes necessary to support this plan." [**2013 2nd sp.s. c 9 § 1**.]

Effective dates—2013 2nd sp.s. c 9: "(1) Sections 2 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2013.

(2) Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013.

(3) Sections 5, 6, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 30, 2013]." [**2013 2nd sp.s. c 9 § 9**.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: "Sections 1 through 3 of this act take effect September 1, 2011." [**2011 1st sp.s. c 27 § 8**.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW **28A.150.200**.

Intent—2009 c 548: See RCW **28A.150.1981**.

Finding—2009 c 548: See note following RCW **28A.410.270**.

Intent—Finding—2009 c 548: See note following RCW **28A.305.130**.

Contingent expiration date—1995 c 77 § 1: "Section 1 of this act shall expire September 1, 2000. However, section 1 of this act shall not expire if, by September 1, 2000, a law is not enacted stating that a school accountability and academic assessment system is not in place." [**1995 c 77 § 32**.] That law was not enacted by September 1, 2000.

Contingent effective date—1993 c 371 § 2: "Section 2 of this act shall take effect September 1, 2000. However, section 2 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school

accountability and academic assessment system is not in place." [[1993 c 371 § 5](#).] That law was not enacted by September 1, 2000.

Contingent effective date—1992 c 141 §§ 502-504, 506, and 507: See note following RCW [28A.150.205](#).

Findings—Part headings—Severability—1992 c 141: See notes following RCW [28A.410.040](#).

Severability—1982 c 158: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[1982 c 158 § 8](#).]

Effective date—1979 ex.s. c 250: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and except as otherwise provided in subsection (5) of section 1, and section 2 of this amendatory act, shall take effect August 15, 1979." [[1979 ex.s. c 250 § 10](#).]

Severability—1979 ex.s. c 250: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[1979 ex.s. c 250 § 11](#).]

Effective date—Severability—1977 ex.s. c 359: See notes following RCW [28A.150.200](#).

APPENDIX D

RCW 28A.150.200**Program of basic education.**

(1) The program of basic education established under this chapter is deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution, which states that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex," and is adopted pursuant to Article IX, section 2 of the state Constitution, which states that "The legislature shall provide for a general and uniform system of public schools."

(2) The legislature defines the program of basic education under this chapter as that which is necessary to provide the opportunity to develop the knowledge and skills necessary to meet the state-established high school graduation requirements that are intended to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship. Basic education by necessity is an evolving program of instruction intended to reflect the changing educational opportunities that are needed to equip students for their role as productive citizens and includes the following:

(a) The instructional program of basic education the minimum components of which are described in RCW **28A.150.220**;

(b) The program of education provided by chapter **28A.190** RCW for students in residential schools as defined by RCW **28A.190.020** and for juveniles in detention facilities as identified by RCW **28A.190.010**;

(c) The program of education provided by chapter **28A.193** RCW for individuals under the age of eighteen who are incarcerated in adult correctional facilities;

(d) Transportation and transportation services to and from school for eligible students as provided under RCW **28A.160.150** through **28A.160.180**; and

(e) Statewide salary allocations necessary to hire and retain qualified staff for the state's statutory program of basic education.

[**2017 3rd sp.s. c 13 § 401**; **2009 c 548 § 101**; **1990 c 33 § 104**; **1977 ex.s. c 359 § 1**. Formerly RCW **28A.58.750**.]

NOTES:

Effective date—2017 3rd sp.s. c 13 §§ 401-413: "Sections 401 through 413 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2017." [**2017 3rd sp.s. c 13 § 414**.]

Intent—2017 3rd sp.s. c 13: See note following RCW **28A.150.410**.

Effective date—2009 c 548 §§ 101-110 and 701-710: "Sections 101 through 110 and 701 through 710 of this act take effect September 1, 2011." [**2009 c 548 § 804**.]

Intent—2009 c 548: See RCW **28A.150.1981**.

Finding—2009 c 548: See note following RCW **28A.410.270**.

Intent—Finding—2009 c 548: See note following RCW **28A.305.130**.

Effective date—1977 ex.s. c 359: "This 1977 amendatory act shall take effect September 1, 1978." [**1977 ex.s. c 359 § 22**.]

Severability—1977 ex.s. c 359: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [**1977 ex.s. c 359 § 21**.]

APPENDIX E

RCW 49.60.040**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) "Commission" means the Washington state human rights commission.

(4) "Complainant" means the person who files a complaint in a real estate transaction.

(5) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW [41.04.007](#); or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(18) "National origin" includes "ancestry."

(19) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(22) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(23) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(24) "Service animal" means any dog or miniature horse, as discussed in RCW [49.60.214](#), that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being,

comfort, or companionship do not constitute work or tasks. This subsection does not apply to RCW **49.60.222** through **49.60.227** with respect to housing accommodations or real estate transactions.

(25) "Sex" means gender.

(26) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

[**2018 c 176 § 2**. Prior: **2009 c 187 § 3**; prior: **2007 c 317 § 2**; **2007 c 187 § 4**; **2006 c 4 § 4**; **1997 c 271 § 3**; **1995 c 259 § 2**; prior: **1993 c 510 § 4**; **1993 c 69 § 3**; prior: **1985 c 203 § 2**; **1985 c 185 § 2**; **1979 c 127 § 3**; **1973 c 141 § 4**; **1969 ex.s. c 167 § 3**; **1961 c 103 § 1**; **1957 c 37 § 4**; **1949 c 183 § 3**; Rem. Supp. 1949 § 7614-22.]

NOTES:

Declaration—Finding—Purpose—Effective date—2018 c 176: See notes following RCW **49.60.215**.

Finding—2007 c 317: "The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with disabilities act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act." [**2007 c 317 § 1**.]

Retroactive application—2007 c 317: "This act is remedial and retroactive, and applies to all causes of action occurring before July 6, 2006, and to all causes of action occurring on or after July 22, 2007." [**2007 c 317 § 3**.]

Effective date—1995 c 259: See note following RCW **49.60.010**.

Severability—1993 c 510: See note following RCW **49.60.010**.

Severability—1993 c 69: See note following RCW **49.60.030**.

Severability—1969 ex.s. c 167: See note following RCW **49.60.010**.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [**1961 c 103 § 4**.]

Severability—1957 c 37: See note following RCW **49.60.010**.

Severability—1949 c 183: See note following RCW **49.60.010**.

APPENDIX F

HTML has links - PDF has Authentication**PDF WAC 392-145-011****School district requirements.**

All school districts shall comply with the following requirements:

(1) The provisions of this chapter shall be incorporated by express reference into all school district contracts for the transportation of students in privately owned and operated school buses. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district shall be subject to the provisions of this chapter.

(2) School district boards of directors shall adopt written policies or rules for passengers riding school buses not inconsistent with applicable state law and rules. A copy of these policies or rules shall be provided to each student who is scheduled to ride the school bus.

(3) Every school bus driver shall be provided a copy of and shall be thoroughly familiar with all state and local rules and regulations pertaining to the operation of a school bus.

(4) School bus drivers shall be provided a copy of and training in school district rules and regulations pertaining to bullying, harassment, and for reporting sexual misconduct allegations.

(5) On highways divided into separate roadways as provided in RCW **46.61.150** and highways with three or more marked traffic lanes, school districts shall design bus routes that serve each side of the highway so that students do not have to cross the highway, unless there is a traffic control signal as defined in RCW **46.04.600** or an adult crossing guard within three hundred feet of the bus stop to assist students while crossing such multiple-lane highways.

(6) No school bus stop shall be located on a curve or a hill where visibility is not at least five hundred feet. If it is impossible to secure a distance of at least five hundred feet of visibility for a school bus stop, the school authorities, and the traffic engineering department of the jurisdiction responsible for the roadway shall be advised and the stop shall be changed or proper signs installed.

[Statutory Authority: RCW **46.61.380**. WSR 18-16-121, § 392-145-011, filed 8/1/18, effective 9/1/18; WSR 07-05-058, § 392-145-011, filed 2/20/07, effective 11/1/07.]

APPENDIX G

For individual district data, please select school year tabs (below) for student count tables for each reporting period.

Student counts are done AM and PM at the school load zone.

Walk Area students are subtracted from the basic student counts and are not funded.

	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2012	733,125	9,149	16,169	740,145	32,958	2,578	5,555	2,049	5,661	48,801
Winter 2013	698,547	8,596	16,441	706,392	33,846	2,486	5,255	2,920	6,413	50,920
Spring 2013	685,468	8,728	16,985	693,725	34,790	2,488	5,211	3,574	6,341	52,404
2012-13 Annual Ridership	352,857	4,412	16,532	364,976	16,932	1,259	2,670	1,424	6,138	28,423
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2013	730,394	7,788	17,130	739,736	34,175	2,833	5,776	2,285	4,767	49,836
Winter 2014	705,618	7,429	17,866	716,055	35,501	3,063	6,359	3,029	5,607	53,559
Spring 2014	683,806	7,498	17,580	693,888	37,080	3,001	6,374	3,753	5,264	55,472
2013-14 Annual Ridership	353,303	3,786	17,525	367,043	17,793	1,483	3,085	1,511	5,213	29,084
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2014	733,008	8,598	18,145	742,555	35,703	3,134	7,504	1,906	4,571	52,818
Winter 2015	710,150	7,792	19,125	721,483	35,540	2,949	7,550	3,284	4,847	54,170
Spring 2015	688,117	7,407	19,840	700,550	36,932	2,921	6,994	3,658	5,415	55,920
2014-15 Annual Ridership	355,213	3,966	19,037	370,283	18,029	1,501	3,675	1,475	4,944	29,624
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2015	733,406	7,382	18,656	744,680	35,692	2,814	8,587	1,959	5,367	54,419
Winter 2016	713,947	6,271	18,289	725,965	36,360	2,841	8,589	3,249	6,011	57,050
Spring 2016	688,897	6,409	19,127	701,615	36,738	2,666	8,540	3,717	6,225	57,886
2015-16 Annual Ridership	356,042	3,344	18,691	371,389	18,132	1,387	4,286	1,488	5,868	31,160
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2016	737,100	7,537	19,450	749,013	35,932	2,620	9,028	2,102	5,995	55,677
Winter 2017	714,626	5,997	19,549	728,178	37,034	2,674	8,727	2,957	6,193	57,585
Spring 2017	700,092	6,326	19,856	713,622	37,774	2,008	8,480	3,986	6,570	58,818
2016-17 Annual Ridership	358,636	3,310	19,618	374,945	18,457	1,217	4,373	1,508	6,253	31,806
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2017	744,052	6,384	21,594	759,262	39,115	1,662	9,431	2,413	5,655	58,276
Winter 2018	722,064	6,394	20,498	736,168	39,838	2,253	8,088	3,394	5,874	59,447
Spring 2018	698,904	6,420	21,527	714,011	40,539	2,128	8,912	4,356	6,696	62,631
2017-18 Annual Ridership	360,837	3,200	21,206	378,843	19,915	1,007	4,405	1,694	6,075	33,097
	Basic Riders on Buses	Walk Area Riders	Transit Riders	Funded Basic Program Riders	Special Ed Riders	Bilingual	Gifted	Homeless	Early Ed	Special Program Riders
Fall 2018	743,129	5,751	19,353	756,731	39,811	3,173	9,003	2,352	6,039	60,378
Winter 2019	729,807	5,722	20,388	744,473	40,477	2,853	8,310	3,639	6,711	61,990
Spring 2019	701,353	5,704	20,477	716,126	40,636	2,957	8,733	4,442	7,888	64,656
2018-19 Annual Ridership	362,382	2,863	20,073	379,591	20,154	1,497	4,341	1,739	6,879	34,610

Funded Basic Program Riders	Basic Riders with Walk Area Riders removed plus the Transit Riders
Special Ed Riders	AM+PM count of students provided with transportation required by the student's IEP or 504 Plan
Bilingual	AM+PM count of students provided with transportation to a bilingual program in a centralized location
Gifted (in centralized location)	AM+PM count of students provided with transportation to a gifted program in a centralized location
Homeless	AM+PM count of students provided with transportation under the provisions of McKinney-Vento
Early Ed Programs	AM+PM count of Early Education Program students (does not include mid-day transportation counts)
Special Program Riders	Total or AM + PM count of Special Ed + Bilingual + Gifted + Homeless + Early Ed riders

Annual Ridership Row Data Description

Basic Riders on Buses	Average of the Fall, Winter, Spring reports divided by 2
Walk Area Riders	Average of the Fall, Winter, Spring reports divided by 2
Transit Riders	Average of the Fall, Winter, Spring reports
Funded Basic Program Riders	Total of Basic Riders - Walk Area Riders + Transit (in the Annual Ridership row)
Special Ed Riders	Average of the Fall, Winter, Spring reports divided by 2
Bilingual	Average of the Fall, Winter, Spring reports divided by 2
Gifted (in centralized location)	Average of the Fall, Winter, Spring reports divided by 2
Homeless	Average of the Fall, Winter, Spring reports divided by 2
Early Ed Programs	Average of the Fall, Winter, Spring reports (not divided by 2 to account for not counting mid-day transportation)
Special Program Riders	Total of Special Ed + Bilingual + Gifted + Homeless + Early Ed (in the Annual Ridership row)

APPENDIX H

Washington State School Bus Specifications



Chris Reykdal
State Superintendent of
Public Instruction

Revised September 2018



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Chris Reykdal • State Superintendent

Office of Superintendent of Public Instruction

Old Capitol Building • P.O. Box 47200

Olympia, WA 98504-7200



OSPI Chris Reykdal, State Superintendent

*Every student ready for
career, college, and life*

SPECIFICATIONS FOR SCHOOL BUSES

Effective September 1, 2018

SPECIFICATIONS FOR SCHOOL BUSES

GLENN GORTON
Director
Student Transportation

REGIONAL TRANSPORTATION COORDINATORS

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Mike Shahan, Region II

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ACKNOWLEDGEMENTS

The Superintendent would like to acknowledge the dedicated work of all those involved in the development and production of this manual. The result of this work is a safer, more efficient school bus to provide transportation for the students of Washington State, to and from school and school activities. While it is not possible to specifically include the names of all those involved, the single individual most responsible for maintaining the accuracy of the information contained in this manual was the former regional transportation coordinator, Mike Kenney who retired on June 30, 2015. His work was a reflection of his exceptional passion for the safety of students and is deeply appreciated.

DEFINITIONS

The following definitions are used in this manual:

1. "School bus" shall mean every vehicle with a seating capacity of more than ten persons, including the driver, regularly used to transport students to and from school or in connection with school activities.
2. A Type A school bus shall mean a conversion bus constructed utilizing a cutaway front section vehicle with a left side driver's door. This definition includes two classifications: Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 pounds, not to exceed 36-passenger seating capacity.
4. A Type B school bus shall mean a conversion or body constructed and installed upon a van or front section vehicle chassis, or stripped chassis, with a GVWR greater than 10,000 pounds, designed for carrying more than ten persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat, and the service entrance door is behind the front wheels.
5. A Type C school bus shall mean a body installed upon a flat back cowl chassis, or a stripped chassis, with a GVWR greater than 21,500 pounds, designed for carrying more than ten persons. The service entrance door is behind the front wheels. This type also includes the above chassis with a passenger seating capacity greater than 36, and may have a left side driver's door.
6. A Type D school bus shall mean a body installed upon a chassis, with a GVWR greater than 10,000 pounds, designed for carrying more than ten persons. The engine may be behind the windshield and beside the driver's seat, at the rear of the bus behind the rear wheels, or midship between the front and rear axles. The service entrance door is ahead of the front wheels.
7. A Special Needs School bus shall mean any Type A, B, C, or D school bus as defined in this section, which has been modified to transport students requiring the use of a Wheelchair/Mobility Aid Position or Lift.

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APPENDIX I

School Bus Driver Handbook

Revised March 2019



Chris Reykdal
State Superintendent of Public Instruction



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SCHOOL BUS DRIVER HANDBOOK

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August 2017

Note: The Office of Superintendent of Public Instruction (OSPI) is committed to providing access to all individuals seeking information on our website. Some changes to the layout and design of this document have been made in order to make it compliant with the Americans with Disabilities Act and the OSPI Accessibility Policy.

Acknowledgments

This revision of the School Bus Driver Handbook was based on previous versions. Therefore, it is only right that all those involved in the development of driver handbooks over the years be acknowledged. Unfortunately, no comprehensive list of those individuals exists. Isaac Newton said: "If I have seen further, it is by standing on the shoulders of giants." Likewise, those who worked on this handbook have been able to stand on the shoulders of those giants in the field of student transportation in Washington State. We thank you.

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Michael Shahan, Puget Sound ESD 121 & Olympic ESD 114

Mark Dennis, Northwest ESD 189

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support. When you hear unkind, humiliating remarks, respond immediately. Remember, doing nothing is not an option.

Documentation is critical. All allegations must be reported and documented. Take all your concerns to your supervisor, principal, or other designated school personnel. Policies and procedures are designed to protect all members of the educational community in the exercise of their rights and responsibilities.

Sexual Harassment and Peer-to-Peer (Student-to-Student) Harassment

Sexual harassment is a form of sex discrimination and is illegal according to Title VII of the Civil Rights Act of 1964, which protects an adolescent at work, and Title IX of 1972, which protects students from sex discrimination at school.

- Sexual harassment is a deliberate or repeated behavior that is unwelcome, not asked for, and not returned. The word “unwelcome” places responsibility on the receiver to tell the sender the behavior is unwanted.
- The behavior can be verbal, nonverbal, visual, and/or physical.
- Examples of **verbal sexual harassment** include teasing someone about their body development or body parts, telling dirty sexist jokes, calling others names that have a negative sexual meaning, or saying something to someone about sexual acts.
- Examples of **nonverbal sexual harassment** may include obscene gestures, “wolf whistles”, or looking at another person in a way that makes them feel uncomfortable (suggestive looks, leering, staring).
- Examples of **visual sexual harassment** include glaring or staring; obscene/suggestive letters, notes, or graffiti; obscene/suggestive pictures taped inside locker or on notebooks; or posters of nude or nearly nude people.
- Examples of **physical sexual harassment** include purposely brushing against someone’s body; “friendly” pats, pinches, grabs and holds; pulling down someone’s gym shorts; or physically cornering a person in one place.

Harassment includes remarks or behavior that shows disrespect for its victims and is unwelcome. It hurts and harms the student victim in long-lasting ways. **It is not the way a student should be treated.** The student may suffer from a loss of confidence or self-esteem, find it hard to study and pay attention, and dread or even avoid going to school if they anticipate harassment.

School bus drivers have a legal responsibility to protect students from known or reasonably foreseeable harm occurring during, or in connection with, school activities.

APPENDIX J

received under this chapter in the log patrol revolving fund.

Passed the House January 31, 1957.

Passed the Senate February 21, 1957.

Approved by the Governor March 1, 1957.

CHAPTER 37.

[H. B. 25.]

CIVIL RIGHTS—LAW AGAINST DISCRIMINATION.

AN ACT relating to civil rights, amending section 1, chapter 183, Laws of 1949 and RCW 49.60.010; amending section 12, chapter 183, Laws of 1949 and RCW 49.60.020; amending section 2, chapter 183, Laws of 1949 and RCW 49.60.030; amending section 3, chapter 183, Laws of 1949 and RCW 49.60.040; amending section 2, chapter 270, Laws of 1955 and RCW 49.60.050; amending section 6, chapter 270, Laws of 1955 and RCW 49.60.090; amending section 8, chapter 270, Laws of 1955 and RCW 49.60.120; amending section 7, chapter 183, Laws of 1949 and RCW 49.60.180 through 49.60.220; amending section 15, chapter 270, Laws of 1955 and RCW 49.60.230; amending section 16, chapter 270, Laws of 1955 and RCW 49.60.240; amending section 17, chapter 270, Laws of 1955 and RCW 49.60.250; section 9, chapter 183, Laws of 1949 and RCW 49.60.260 through 49.60.300; amending section 10, chapter 183, Laws of 1949 and RCW 49.60.310; and adding three new sections to chapter 183, Laws of 1949 and chapter 49.60 RCW.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 1, chapter 183, Laws of 1949 and RCW 49.60.010 are each amended to read as follows:

RCW 49.60.010 amended.

This chapter shall be known as the "Law Against Discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of

Short title—
Purpose of
chapter.

(2) The right to the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement;

(3) The right to secure publicly-assisted housing without discrimination.

SEC. 4. Section 3, chapter 183, Laws of 1949 and RCW 49.60.040 are each amended to read as follows: RCW 49.60.040 amended.

As used in this chapter:

“Person” includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof; Definitions.
“Person.”

“Employer” includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious or sectarian organization, not organized for private profit; “Employer.”

“Employee” does not include any individual employed by his parents, spouse or child, or in the domestic service of any person; “Employee.”

“Labor organization” includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment; “Labor organization.”

“Employment agency” includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer; “Employment agency.”

“National origin” includes “ancestry”; “Natural origin.”

“Full enjoyment of” includes the right to pur- “Full enjoyment of.”

Definitions.

chase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited;

"Any place of public resort, accommodation, assemblage or amusement."

"Any place of public resort, accommodation, assemblage or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods, merchandise, services or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing herein contained shall be construed to include or apply to any institute, bona fide club, or place of accom-

Proviso.

modation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this act; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution;

Definitions.

“Publicly-assisted housing” includes any building, structure or portion thereof which is used or occupied or is intended to be used or occupied as the home, residence or sleeping place of one or more persons, and the acquisition, construction, rehabilitation, repair or maintenance of which is financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions, or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly-assisted only during the life of such loan and such guarantee or insurance, or if a commitment, issued by a government agency, is outstanding that the acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions, or any agency thereof;

“Publicly-assisted housing.”

“Owner” includes the owner, lessee, sublessee, assignee, agent, creditor, lender or other person having the right to ownership or possession of housing, or to have housing pledged as security for a debt.

“Owner.”

SEC. 5. Section 2, chapter 270, Laws of 1955 and RCW 49.60.050 are each amended to read as follows:

RCW 49.60.050 amended.

There is created the “Washington state board against discrimination,” which shall be composed of five members to be appointed by the governor,

Board created.

RCW 49.60.200 amended.

Unfair practices of employment agencies defined.

SEC. 11. (RCW 49.60.200) It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, any individual because of his race, creed, color, or national origin, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language.

Proviso.

RCW 49.60.210 amended.

Unfair to discriminate against person opposing unfair practice.

SEC. 12. (RCW 49.60.210) It is an unfair practice for any employer, employment agency, or labor union to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden by this chapter, or because he has filed a charge, testified, or assisted in any proceeding under this chapter.

RCW 49.60.220 amended.

Unfair practice to aid violation.

SEC. 13. (RCW 49.60.220) It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder.

New section.

SEC. 14. There is added to chapter 183, Laws of 1949 and chapter 49.60 RCW, a new section to read as follows:

Unfair practices of places of public resort, accommodation, assemblage, amusement.

It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination or the requiring of any person to pay a larger sum than the uniform rates

charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, or national origin.

SEC. 15. There is added to chapter 183, Laws of 1949 and chapter 49.60 RCW, a new section to read as follows: New section.

It shall be an unfair practice:

(1) For the owner of publicly-assisted housing to refuse to sell, rent, or lease to any person or persons such housing because of the race, creed, color, or national origin of such person or persons;

Unfair practices with respect to publicly-assisted housing.

(2) For the owner of any publicly-assisted housing to segregate, separate or discriminate against any person or persons because of the race, creed, color, or national origin of such person or persons, in the terms, conditions, or privileges of any such housing or in the furnishing of facilities or services in connection therewith;

(3) For any person to make or cause to be made any written or oral inquiry concerning the race, creed, color, or national origin of a person or group of persons seeking to purchase, rent, or lease publicly-assisted housing accommodations;

(4) For any person to print or publish or cause to be printed or published any notice or advertisement relating to the sale, rental, or leasing of any publicly-assisted housing accommodation which indicates any preference, limitation, specification, or discrimination based on race, creed, color, or national origin;

(5) For any person, bank, mortgage company or other financial institution to whom application is made for financial assistance for the acquisition, con-

cumstances other than those to which it is held invalid shall not be affected thereby.

Passed the House February 25, 1957.

Passed the Senate February 23, 1957.

Approved by the Governor March 2, 1957.

CHAPTER 38.

[Sub. H. B. 68.]

STATE DEPARTMENT OF NATURAL RESOURCES.

AN ACT relating to state government; providing for administration of laws pertaining to the natural resources of the state; establishing a new department of natural resources consisting of a board, an administrator and a supervisor; abolishing certain offices, departments, boards, commissions and committees; transferring powers, duties and functions of the abolished agencies and others to the new department; prescribing the powers, duties and functions of the board, administrator and the supervisor; providing for the financing of the new agency; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The purpose of this act is to provide for more effective and efficient management of the forest and land resources in the state by consolidating into a department of natural resources certain powers, duties and functions of the division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, all state sustained yield forest committees, director of conservation and development, state capitol committee, director of licenses, secretary of state, tax commission and commissioner of public lands.

Purpose
of act.

SEC. 2. For the purpose of this act, except where a different interpretation is required by the context:

Definitions.

(1) "Department" means the department of natural resources;

"Department."

APPENDIX K

record of previous crimes committed by the person described on the data submitted, or a transcript of the dependency record information regarding the person described on the data submitted, or if there is no record of his commission of any crimes, or if there is no dependency record information, a statement to that effect.

(3) The Washington state patrol shall charge fees for processing of noncriminal justice system requests for criminal history record information pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the patrol of processing such requests.

Any law enforcement agency may charge a fee not to exceed five dollars for the purpose of taking fingerprint impressions or searching its files of identification for noncriminal purposes.

Passed the Senate April 16, 1985.

Passed the House April 8, 1985.

Approved by the Governor May 7, 1985.

Filed in Office of Secretary of State May 7, 1985.

CHAPTER 202

[Senate Bill No. 4216]

DENTISTS—WAIVER OF COPAYMENT REQUIREMENTS PROHIBITED

AN ACT Relating to dentistry; and adding a new section to chapter 18.32 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 18.32 RCW to read as follows:

It is unprofessional conduct under this chapter and chapter 18.130 RCW for a dentist to abrogate the copayment provisions of a contract by accepting the payment received from a third party payer as full payment.

Passed the Senate March 15, 1985.

Passed the House April 16, 1985.

Approved by the Governor May 7, 1985.

Filed in Office of Secretary of State May 7, 1985.

CHAPTER 203

[Engrossed Senate Bill No. 4259]

SEX DISCRIMINATION IN PUBLIC PLACES PROHIBITED

AN ACT Relating to discrimination; and amending RCW 49.60.215 and 49.60.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 14, chapter 37, Laws of 1957 as amended by section 7, chapter 127, Laws of 1979 and RCW 49.60.215 are each amended to read as follows:

It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

Sec. 2. Section 3, chapter 183, Laws of 1949 as last amended by section 3, chapter 127, Laws of 1979 and RCW 49.60.040 are each amended to read as follows:

As used in this chapter:

"Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

"Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

"Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

"Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

"Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

"National origin" includes "ancestry";

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations,

advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, or with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;

"Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: **PROVIDED**, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental, or lease of real property.

"Sex" means gender.

"Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to

transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

Passed the Senate March 19, 1985.

Passed the House April 16, 1985.

Approved by the Governor May 7, 1985.

Filed in Office of Secretary of State May 7, 1985.

CHAPTER 204

[House Bill No. 575]

PUBLIC TRANSPORTATION EMPLOYEES—VOLUNTARY PAYROLL DEDUCTIONS FOR POLITICAL ACTION COMMITTEES

AN ACT Relating to public transportation employees; and adding a new section to chapter 35.58 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 35.58 RCW to read as follows:

Any public official authorized to disburse funds in payment of salaries and wages of public transportation employees may, upon written request of the employee, deduct from the salary or wages of the employee, contributions for payment of voluntary deductions for political action committees sponsored by labor or employee organizations with public transportation employees as members. For the purposes of this section, "public transportation employees" means employees of a public transportation system specified in RCW 35.58.272 who are covered by a collective bargaining agreement.

Passed the House March 20, 1985.

Passed the Senate April 19, 1985.

Approved by the Governor May 7, 1985.

Filed in Office of Secretary of State May 7, 1985.

CHAPTER 205

[Substitute House Bill No. 1153]

VOTER REGISTRATION FACILITIES—POLLING PLACES—ACCESSIBILITY FOR ELDERLY AND HANDICAPPED

AN ACT Relating to accessibility of polling places and voter registration facilities; amending RCW 29.57.010, 29.57.030, and 29.48.007; adding a new section to chapter 29.07 RCW; adding new sections to chapter 29.57 RCW; repealing RCW 29.57.020 and 29.57.060; declaring an emergency; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

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