21-1610



No. _____



In the
# Supreme Court of the United States

PAULA STEVEN, INDIVIDUALLY, AND AS A PARENT AND GUARDIAN OF D.M., A MINOR,
*Petitioner*,

v.

FEDERAL WAY SCHOOL DISTRICT,
*Respondent.*

**On Petition for a Writ of Certiorari to the Supreme Court of Washington**

## PETITION FOR A WRIT OF CERTIORARI

PAULA STEVEN
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*Pro Se Petitioner*

JUNE 24, 2022

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## QUESTIONS PRESENTED

The questions presented are below:

1. Whether a Black mother of a public school student who walks her young Black, student into school every morning through the main entrance and not the side doors protected by the Fourteenth Amendment. All non-Black parents are allowed to walk in the front main entrance with their student and not receive truancy notices nor mandatory truancy conference notices for violation of the Washington State truancy laws.

2. Whether assuming a Black mother and her Black student and a White mother, and her white student, who all enter the school through the main entrance school doors. Should the Black parent and Black student be treated equally under the Equal Protection Clause of the Fourteenth Amendment.

3. Whether the RAP 9.12 has authority over the Fourteenth Amendment.

## PARTIES TO THE PROCEEDING

Petitioner Paula Steven, and her child D.M. (D.M.'s claims were settled before summary judgment.) Paula Steven and D.M. were the sole plaintiffs' below. Respondent Federal Way School District was the sole defendant and appellee below.

## STATEMENT OF RELATED PROCEEDINGS

This case is directly related to the following proceedings in the Supreme Court of Washington State, The Court of Appeals of the State of Washington, Division I, Superior Court of the State of Washington For King County:

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, No. 19-2-16487-5, Superior Court of the State of Washington for King County, (Aug. 9, 2021) (order denying plaintiffs' motion to supplemental of the trial court's order granting summary judgment)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Court of Appeals of the State of Washington, Division I, No. 82042-7-I, (Oct. 14, 2021) (deny motion to modify)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Court of Appeals of the State of Washington, Division I, No. 82042-7-I, (Nov. 1, 2021) (denying reconsideration) (deny appeal) (deny objection) (deny motion to modify)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Court of Appeals of the State of Washington, Division I, No. 82042-7-I, (Nov. 30, 2021) (deny motion to publish)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Court of Appeals of the State of Washington, Division I, No. 82042-7-I, (Nov. 30, 2021) (deny reconsideration)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Court of Appeals of the State of Washington, Division I, No. 82042-7-I, (Nov. 30, 2021) (deny motion to publish)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Supreme Court of Washington State, No. 100393-5 (Mar. 30, 2022), (denying motion to modify)

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Ruling Denying Review, No. 100393-5, January 13, 2022.

*Paula Steven, individually and as parent and guardian of the of D.M., a minor v. Federal Way School District*, Superior Court of the State of Washington for King County, No. #18-2-18106-2KNT (July 18, 2018) (Complaint for Judicial Review of Agency Action, and for Attorney Fees and Penalties Under RCW 42.56.)

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## PETITION FOR WRIT OF CERTIORARI

The decision below extended the catastrophe conclusion that the Constitution disallows what is protected. Petitioner Paula Steven, is a person who exercised her right to enter the front (main entrance) of her child's public school. At the initial injunctive stage Seven Justices conveyed that a Black parent and their Black student has no right to enter the main entrance of the public school as do non-Black parents. RAP 9.12 and the definition of Celotex overrides all evidence that will show genuine issues of material fact, material factual issues for trial and meeting all causes and requirements that show prima facie. The decisions of the Seven members has made it impossible to conform to the Sixth, Seventh, Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment and any other that are applicable to Steven.

## OPINIONS BELOW

The Supreme Court of Washington State and Court of Appeals of Washington State decisions reported at Steven and D.M. v. Federal Way School District, 2021 WL 2828534 (Wash.App. Div. 1). The Superior Court of the State of Washington for King County orders denying plaintiffs' motion to supplemental of the trial court's order granting summary judgment, denying reconsideration, motion to modify, motion to publish, motion to review record, ruling denying review, denying objection is reproduced in the Appendix.

## JURISDICTION

The Supreme Court of Washington State, issued its order denying Motion to Modify, March 30, 2022. After the Court of Appeals, reconsideration and denial of motion to publish November 30, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth, Seventh, Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment and any other that are applicable to Steven. U.S. Constitution are reproduced at App. 52.

## STATEMENT OF THE CASE

Steven is the mother of minor Plaintiff D.M. *See Clerk's Papers* ("*CP*") 1-14. In the fall of 2016 Steven, began to take notice that she and D.M., was being targeted and was the victim of selective discrimination and retaliation.

On October 10, 2016, Joleen Wieser, Office Staff, emailed D.M.'s teacher Ms. Michele McHugh, and stated the following below:[1],[2]

> *"The office is noticing that D.M. is slipping in around 10 minutes late every day. It would be*

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[1] For clarity, I will refer to the Petitioner by her last name Steven, and the other Plaintiff, D.M Steven's minor child (*D.M. claims have been settled*), and the Respondent's as the Federal Way School District or the District, and individuals at the District by their last names.

[2] CP 857 - 882 (Exhibit 2 to Steven's Declaration).

*helpful if you sent him to the office for a tardy slip.*" (CP 857 - 882, Ex:2)

Ms. McHugh responded by stating the following below:

"*I usually see D.M. and his mom standing off to the side during the morning meeting each day. I will remind her what time he needs to be here so he won't be marked tardy. It's hard to see when they slip in because there's so many people. I'll keep an extra close eye out and send him to you if he's late!*" (CP 857 - 882, Ex: 2)

October 17, 2016, Steven, sent a letter to Ms. Ra'jeanna Conerly, Principal and Dr. Terry Meisenburg, Interim Principal, notifying them both that she is alleging her and D.M. are being with intent subjected to unfair educational practices, racial profiling, singled out, treated differently than other non-Black students and parents. (CP 709 - 832, Ex: 6).

On November 14, 2016, Steven responded to McBride's letter stating the following below:

**Please, be notified that I am concerned you are subjecting D.M. and I to unfair education practices, racial profiling and harassment by you and the staff. You are singling D.M. and I out, discriminating against us and subjecting us to different terms and conditions than other non-black students and parents. These accusations and false statements by you and your staff regarding D.M.'s attendance and late**

**tardies is/was affecting D.M.'s learning at Lakeland**. (CP 709- 832, Ex: 8).

Steven on numerous occasions verbally and in writing notified Miesenburg, Conerly, and McBride, of the Caucasion female parent and her (student) son arriving to school after Steven and D.M. and that she (the Caucasion women) had not been subjected to her son's attendance being changed from on-time arrival to half day absences, nor was she in receipt of notices regarding her son's attendance, she also did not receive email's to her son's teacher to monitor her and her son in the mornings from the office staff nor her son's teacher.

Steven and the non-Black parent stand in close proximity of each other every morning, because Steven and D.M. and the non-Black, parent and her student enter the same main entrance door. Steven asked her did she receive any notices from Weiser, Stromberg, McBride, Lambert or her son's teacher regarding arriving to school late in the mornings and the female stated, to Steven, "no" she did not receive any truancy notices/letters nor mandatory truancy conferences from her son's attendance and nor did her son's teacher talk to her.

Additionally, Steven in her seven (7) hour deposition conducted by the District's counsel, Ms. Patricia Buchanan, Ms. Haley Moore, of Patterson Buchanan Fobes & Lietch, Inc., P.S., Seattle, Washington. Steven was asked the following below:

**QUESTION**[3]

Yes. I am looking at my notes. With respect to -- you said of the other incidents of alleged discrimination where the office staff was manipulating attendance. I understand you complained about that the

And my question for you is: After you complained about the attendance issue, isn't it the case that the

**ANSWER**[4]

*I notified him that I felt that that was a big issue, that it was -- that I felt like that was discriminatory, and that D.M. and I was being singled out, treated differently than other nonwhite students, and that we were being profiled, racially profiled, and that -- you know, because of the way I entered the school, that it was me and my son, and so as I said, that they could see me.*

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[3] Steven's deposition testimony pg. 171, line19 - 25.

[4] Steven's deposition testimony pg. 172, line16 - 24.

CP 709 - 832 (Exhibit 21 to Steven's Declaration), Steven's Opposition to Defendant's Motion for Summary Judgment, page 6, line 2 - 8, the District did not dispute Steven's, deposition testimony.

Steven also stated in her deposition testimony the following below:[5]

**QUESTION**

What was it about this attendance record situation that prompted you to draw a conclusion it was motivated by race?

**ANSWER**

*Well, D.M. and I would walk in to the front entrance, and there was another Caucasion woman and her son that would walk in through the front entrance, and she would always come in after me. I believe they lived close by, so they would walk, because I would see them walking our way when me and D.M. would pass them on my way to school. And -- so that is why.*

**ANSWER**[6]

*And I believe that they didn't do that to the non -- that other Caucasian woman that was -- that would enter after me, her and and her son.*

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[5] Steven's deposition testimony page 173, line 3 - 12.

[6] Steven's deposition testimony page 174, line 4 - 6.

**QUESTION**[7]

Do you know if he received tardies and absences?

**ANSWER**

*I don't think he did I don't think he did. I think I -- I had a conversation with -- I don't know if it was with her or one of the friends because they had their group established of moms in the morning, and so I asked the group. And I'm trying to remember was she -- I think she was in there and no one asked to see the letters and changes but D.M. and I. And the group, I was the only black in the group.*

After, D.M.'s, claims under this lawsuit were settled and approved by the court and after the previously amended discovery date of September 9, 2020, the District, without a Motion to Extend Discovery Date, verbally requested at the September 11, 2020, Status Conference, the Court, to extend the discovery date in order to again depose D.M. The Court extended the discovery and ordered that D.M. was to again be made available for an additional deposition by the District's counsel, Patricia Buchanan.

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[7] Steven's deposition testimony page 175, line 13 - 21, Steven's deposition testimony page 175, line 13 - 21. The Court Reporter, Valerie Seaton, of Moburg, made some transcription errors. Steven, corrected the errors on her June 2, 2020, "Correction Sheet provided by Ms. Seaton. The deposition page 175, line 17, should state "*groups of mom's*," not "*group established.*" Page 175, line 19, should state "*no one had received a letters and,*" not "*no one asked to see the letters and.*"

On September 11, 2020, the date mentioned above the Court authorized an additional deposition and that deposition was taken on September 18, 2020, for on or about three hours and a half (3 ½) hours, the topics per the stipulation of the court for continuation are listed below:

> "1. Events occurring in third and fourth grade pertaining to allegations set forth in the Complaint.
> 2. Claimed injuries or damages as they relate to the remaining claims of Plaintiff Paula Steven." (CP 704 - 705) (CP 2210 - 2211). The Summary Judgment, hearing was scheduled for October 9, 2020."

At D.M.'s September 4, 2020, deposition, the people present were Haley Moore, ESQ, of Patterson Buchanan, Alex Sheridan, ESQ, from the District, Sue Peterson, from the Washington Risk Management Pool and D.M.'s Guardian Ad Litem, Mr. Landon M. Gibson, III, ESQ, this deposition also lasted for on or about three hours and a half (3 ½) hours.

The September 18, 2020, deposition was conducted after D.M.'s claims were settled. D.M.'s stated the following below in his September 4, 2020, deposition testimony:[8]

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[8] Steven's deposition testimony page 78, line 15 through pg. 79 - line 1 - 3.

**QUESTION**

Okay, You -- we talked a little bit about math a little bit ago. And are you very good at percentages?

**ANSWER**

*Percentages*?

**QUESTION**

Do you -- have you learned that yet?

**ANSWER**

*Huh*?

**QUESTION**

Have you learned that yet?

**ANSWER**

*We're learning fractions and decimals, but percents, not really.*

**QUESTION**

Okay. When you would arrive at school for the assemblies, did it seem like, to you, that almost all the kids were already there?

**ANSWER**

*No. There was still some kids coming by the time we were there.*

D.M. received all his formal education through the Federal Way School District. Soon after D.M. began

his third (3rd) and fourth (4th) grade school year the office staff began changing his attendance after his teacher marked him as arriving to school on-time to half day absences. (CP 1203 - 2119, Exhibit 1A).

The school procedure was if students traveled by the school bus to school it was mandatory that they entered the school through the cafeteria. If your student was dropped off in the front of the school at the drop off loop and physically walked by themselves to enter the school, these students were required to enter through the cafeteria, they were not allowed to enter in through the main entrance.

If you, the parent/guardian physically parked your car and walked your student to the main entrance, or just walked to school you and your student could enter the school through the main entrance and you nor your student was required to enter through the cafeteria.

The office is located at the main entrance, it has very large long windows in front of them and that is where Joleen, Stephany, and Cheryl sit. They are in very close proximity to the windows and can see every one who enters and exits the school building. The majority of students either travel via the school bus to school or is dropped off by themselves at the drop off loop and entered the school through cafeteria. D.M. and Steven, and about two (2) other Caucasian, parent's and their student would every single day enter through the main entrance.

Every morning Steven drove D.M. to school. **During their every day drive/route to school Steven and D.M. would pass the non-Black**

**caucasian women and her minor male student who entered after Steven and D.M.**. The non-Black women and her student would walk to school every day. By the time Steven and D.M. arrived at the school parked their car, walked in through the main entrance and was at the assembly the non-Black woman and her student would arrive after D.M. and Steven.

In the fall of 2017, the discrimination continued as it did fall of 2016, and the retaliation began.[9] October 2, 2017, Steven, again received a letter from Julie McBride, Assistant Principal, dated October 2, 2017, with attachments of D.M.'s attendance information alleging D.M. had five (5) excused and/or unexcused absences, D.M. was absent school all day, when he was in school for more than half a day, and D.M. was marked half day absent when he was tardy. (CP 1203 - 2119, Ex: 19.)

D.M. was not being called on when he raised his hand in class to answer questions like other non-Black, students. One day D.M. attempted to handle the harassment and different treatment on his own. *That same day D.M. told his mom that he raised his hand in class at the end of the day of school day to ask his teacher could she stop just calling on students who were non-Black, to answer questions.*

Moreover, when he returned home D.M. told his mother Steven about this incident and that he was being treated differently than other non Blacks. D.M. used the word "non-Black" when describing the

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[9] CP 1203 - 2119, Ex: 2) Please see above pg. 4, paragraph, emal from Julie Wieser. and pg. 6 above, 3rd paragraph.

incident to Steven. D.M. was in third (3rd) grade and only eight (8) years old when he used that word to describe this particular incident.

The District took D.M.'s deposition testimony on September 4, 2020, which lasted approximately three and a half hours (3 ½). The deposition was conducted by the District's legal counsel, Ms. Patricia Buchanan. Ms. Buchanan, had three (3) people present at the deposition. The attendees, were Haley E. Moore, ESQ, of Patterson Buchanan, Alex Sheridan, ESQ, from the District, and Sue Peterson, from the Washington Risk Management Pool. D.M.'s Guardian Ad Litem, Mr. Landon M. Gibson, III, ESQ, was also present. D.M.'s deposition states the following.[10],[11]

**QUESTION**

(By Ms. Buchanan) I'm going to ask the question in a slightly different way. So the things I'm, interested in knowing from you today D.M., are all the things that you believe the school did wrong or bad. So, as it relates to reading, is there anything else the school did wrong or bad. So, as it relates to reading, is there anything

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[10] D.M.'s September 4, 2020, deposition, page 52, line 22 - 25, page 53 , line 1 - 15.

[11] CP 709 - 832 (Steven's Opposition to Defendant's Motion for Summary Judgment, page 3, line 20 - 22, the District did not dispute D.M.'s September 4, 2020, nor September 18, 2020, deposition testimony Steven cited on page 5, line 7 - 17, of Steven's Opposition to Defendant's Motion for Summary Judgment.)

else the school did wrong or bad that we haven't already talked about?

**ANSWER**

*It was they would make me read lower than my actual reading level and my grade level, like -- yeah, that's basically just that.*

**QUESTION**

And did anybody ever tell you why there were making you read lower than your grade level?

**ANSWER**

*No.*

**QUESTION**

Do you have a belief as to why they were making you read lower?

**ANSWER**

*It -- it may have been because of my color.*

**QUESTION**

Okay. You say it might have been because of your color. When did you -- when did you first form that belief?

**ANSWER**

*When I went to fifth grade my teacher was my same color as me and she let me read at my actual level then, but all of my other teachers*

*before made me read at a lower levels than mine.*

D.M.'s deposition testimony he stated the following below:[12],[13]

**QUESTION**

***Okay. Was there ever a time that you feel like you were not called on in class because of your color?***

**ANSWER**

***Yes.***

**QUESTION**

Tell me about that, please.

**ANSWER**

***There was this . . . There was this one time in class where – where this teacher was not a – picking on me for like the math or reading questions. So I – and like I was getting annoyed because she wasn't calling me on either the reading or like math questions. And so I was thinking of just like***

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[12] D.M.'s September 4, 2020, deposition, page 72, line 8 - 21.

[13] CP 709 - 832 (Steven's Opposition to Defendant's Motion for Summary Judgment, page 3, line 20 - 22, the District did not dispute D.M.'s September 4, 2020, nor September 18, 2020, deposition testimony Steven cited on page 5, line 7 - 17, of Steven's Opposition to Defendant's Motion for Summary Judgment.)

***asking her at the end of the day like why or like wasn't it a question format? It was just like call on students no matter like what color they are.***

**QUESTION**[14]

What -- you -- so you had your had raised for all questions?

**ANSWER**

*Yes. I really wanted to share my answer.*

**QUESTION**

And do you remember as you sit here today what your answer was that you were anxious to share?

**ANSWER**

*Oh, it was just like-math related questions and with like reading-related questions, like what's the answer to this question or what does this equal? So it was questions like that.*

**QUESTION**

Okay did -- who did the teacher -- did she usually just call on the same student over and over, or how did that work?

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[14] D.M.'s September 4, 2020, deposition, page 73, line 19 - 25, page 74, line 1 - 5.

**ANSWER**

***She . . . She would – I think she would just mostly call on white students or student that weren't of color.***

**QUESTION**

And how many -- how many students were there in the class of color?

**ANSWER**

*I don't know -- I don't' think there was many, but I don't know the number.*

**QUESTION**

**And -- and so she would – if I understand you correctly, she never called on any students who were of color? Is that correct?**

**ANSWER**

***Yes.***

At D.M.'s September 18, 2020, deposition the followng below was asked and answered:[15]

**QUESTION**

Okay. And then going back to third grade, do you remember -- do you remember -- this is going to be kind of a long question. I'm going to explain it to you because I don't know your

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[15] D.M.'s September 18, 2020, deposition, page 8, line 12 - 25.

vocabulary, so I need to get a sense of your vocabulary. But I'm trying to understand, D., looking at third grade what the racial makeup of the class was.

And would your vocabulary be white students and Asian or nonblack student? Or how would you describe the racial makeup of your third grade class?

**ANSWER**

*There was I think only like two other black students, but they're both female and there is one Hispanic. There might have been more, but there's one that I remember.*

D.M.'s September 18, 2020, deposition testimony the stated the following below:[16]

**QUESTION**

And did you even complain to Ms. Jernigan about any racial issues?

**ANSWER**

*Well, I -- yes, I was going to -- do you want me to just say yes or explain?*

**QUESTION**

Yeah, if you would explain, that would be helpful, D. Thank you.

---

[16] D.M.'s September 18, 2020, deposition, page 10, line 1 - pg. 12, line 21.

ANSWER

*She -- we were like doing something and like she wouldn't call on me like for answers. So I was thinking of asking her to -- well, I was thinking of if she like finally called on me* ***I was going to ask her to call on students no matter what color they are.***

QUESTION

And did you ever have that conversation with her?

ANSWER

*I don't think so. No, because I didn't end up getting called on, so no.*

QUESTION

Why in your mind did you connect her calling on people to their race?

ANSWER

*I'm pretty sure I was the only* ***black male there in that class, and she would not call on me and only called on other students.***

QUESTION

And so is there any other reason that you thought her not calling on you had to do with **race**, anything else?

MS. STEVEN:

*I'm going to object to that because of the form.*

**QUESTION (BY MS. BUCHANAN)**

I mean, did the teacher ever tell you why she didn't call on you?

**ANSWER**

*No.*

**QUESTION**

Okay. Did you talk to other students in the class about why Ms. Jernigan called on certain kids and other others?

**ANSWER**

*No.*

**QUESTION**

When your -- when Ms. Jernigan would call on students, did she call on only students who raised their hand or would she call on kids who did not raise their hand or do you remember?

**MS. STEVEN**: *I'm going to object to that because of the form.*

**QUESTION**

(BY MS. BUCHANAN) You can go ahead, D.M..

***MS. STEVEN**: Do you need the question repeated?*

**ANSWER**

Sure.

**MS STEVEN**: You know, you always can ask that.

**QUESTION**

(BY MS. BUCHANAN) Did Ms. Jernigan ever call on students who did not raise their hand?

**ANSWER**

*No. I don't -- no, I don't think so.*

**QUESTION**

So when there was an occasion where you were raising you hand and you did not get called on and you were going to ask her why but you ended up not, when did that happen? Do you remember?

**ANSWER**

*Oh, can you restate -- I mean, re-say the question.*

**QUESTION**

Sure. Thank you. There was an occasion where you had raised your hand and Ms. Jernigan did not call on you. Is that true?

**ANSWER**

Yes.

**QUESTION**

And on that occasion, how many other kids in the class had their hands raised?

**ANSWER**

*I don't remember.*

**QUESTION**

Were you the only student with your hand raised.

**ANSWER**

*No.*

**QUESTION**

Do you remember who she ended up calling on?

**ANSWER**

*No, I don't remember.*

**QUESTION**

**Did she end up calling on one of the other African-American female student?**

**ANSWER**

***No, I don't think so.***

**QUESTION**

**And is that a clear memory you have where you just don't --**

**ANSWER**

***Well, yeah.***

D.M.'s, September 4, 2020, continues to state the following below:

**QUESTION**[17]

Okay. Did any -- did you ever report to anybody that you felt discriminated against? Let me -- I'm going to ask that question differently, D. Have you heard the word "discrimination" before? Do you know what it means?

**ANSWER**

***Yes.***

**QUESTION**

Okay. Tell me what it means to you.

**ANSWER**

***It -- it means when you judge or act differently to someone because of their skin color.***

**QUESTION**

**Okay. And do you believe that that has ever happened to you?**

**ANSWER**

***Yes.***

**QUESTION**

And -- and are there ways that that has happened to you that we've not talked about today?

---

[17] D.M.'s September 4, 2020, deposition, page 66, line 18 through page 67 line 1 - 15.

ANSWER

I think we've addressed all of them.

QUESTION

**Okay. Have you ever felt discriminated against outside of school?**

ANSWER

***No, just in --***

QUESTION

Have you -- oh, go ahead.

ANSWER

***Just – just in school.***

QUESTION

Okay. Have you ever felt discriminated against by other students?

ANSWER

Yes, a couple times.

D.M. stated the following, to his mother Steven, "*my teacher only points at me during class to show the class how to be quiet and properly sit criss cross applesauce, but when she is picking a student to answer a reading or math problem she does not ever pick me or any other Blacks to answer any problems, she only picks on non-Blacks*".

D.M. stated the following below to Steven: (CP 1203 - 2119, Ex: 8, 3rd paragraph, *bates-numbered* 00023)

> ***"I feel like I'm the student in the background that no one pays attention to."***

D.M. notified his mother, Steven, he was being read to at first (1st) grade reading level when he read to his teacher and his teacher had him read to her. D.M. was sent to first (1st) and second (2nd) grade classes during the school days. D.M. was tormented, harassed, and teased by his peers due to race.

D.M. was teased by classmates because his teacher read to him and she made him read to her at first (1st) grade level. The teacher read to the other students at third (3rd) and above grade levels.[18]

In D.M.'s, September 4, 2020, deposition he stated the following below:[19]

> **QUESTION**
>
> Okay. Can you tell me, the times that other kids discriminated -- discriminated against you, what happened?
>
> **ANSWER**
>
> ***One student told me that he didn't like me because my mom is black.***

D.M.'s continued deposition testimony.[20]

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[18] Please See Above, page 22 through page 31.

[19] D.M.'s September 4, 2020, deposition, page 68, line 5 - 9.

[20] D.M.'s September 4, 2020, deposition, page 69, line 21 through page 70, line 7. The Court Reporter, Mindi L. Pettit, of YOM,

**QUESTION**

**Were you ever tormented or harassed by your peers?**

**ANSWER**

*Which peers*?

**QUESTION**

Classmates?

**ANSWER**

***Yeah. Yes.***

**QUESTION**

What happened there?

**ANSWER**

*Say that again.*

**QUESTION**

What happened?

**ANSWER**

***They were — made fun of me or – or like teased me about my level. The time where the students that didn't like my mom***

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Court Reporting, made some transcription errors Steven, corrected the errors on behalf of D.M., on October 13, 2020, "Correction Sheet provided by Ms. Petitt. The error was D.M. did not state "Which peers?" He stated "What peers?"

***because she's black. So just -- just those moments.***

D.M. was only allowed to pick out kindergarten and second (2nd) grade level reading books in the school library. D.M. stated the following below in his September 18, 2020, deposition.[21]

**QUESTION**

Okay. Did any thing discriminatory happen to you in fourth grade?

**ANSWER**

*Yes.*

**QUESTION**

What happened to you in fourth grade?

**MS STEVEN**: Excuse me, Ms. Buchanan. What did the court order from the status conference say? It seems like we're getting a little bit sidetracked.

**MS. BUCHANAN**: Well, I can refer you to the post order that the judge signed.

**QUESTION**:

(BY MS. BUCHANAN) But you can go ahead and answer, D., if you're able to.

---

[21] D.M.'s September 18, 2020, deposition, page 27, line 4 through page 70, line 7.

**ANSWER**

*They started not letting me pick out books because, you know, I said every grade except fifth they would restart me back at like kindergarten level reading. So they were not letting me pick out my -- like my actual level books. They would -- because they said my level was at kindergarten.. They made me pick out first grade like -- I mean, like kindergarten level books.*

D.M. was physically aggressively grabbed and pulled back by his teacher by his athletic jersey shirt collar. Steven asked the teacher about this incident to confirm if it was true and the teacher admitted that she did physically pull him by his Jersey collar making his neck pull back. D.M. stated the following below in his deposition.

D.M., notified Plaintiff Steven the teacher jerked his jersey collar back so hard that it hurt his neck and stretched his jersey. D.M. provided deposition testimony he returned to his class that day sad, and nervous and that this feeling went on for a long period of time. (CP 709 - 832, pg. 4, paragraph 2). The District did not dispute D.M.'s deposition testimony.

Moreover, D.M., was sent to first (1st) grade classrooms and was not allowed to participate in class Thanksgiving, Christmas and other parties celebrations in his class. In D.M.'s September 18, 2020, deposition he stated the following below:[22]

---

[22] D.M.'s September 18, 2020, deposition, page 21, line 23 through page 22, line 16.

**QUESTION**

During when you were in third grade, D., other than talking to your mom about Ms. Jernigan not calling on you were there -- and other than the reading thing that you just said, were there any other conversations you had with your mom about concerns you had about school?

**ANSWER**

*Like in third grade*?

**QUESTION**

Right, yes, in third grade.

**ANSWER**

*Well, there was the thing where I didn't finish a paper in time for this Christmas party that we were doing, and so I had to go -- to like the first grade class -- or was it kinder -- it was like one of those two grades, and I had to go into one of those classes and everybody else was able to be at the Christmas party.*

**QUESTION**

And that's because you didn't finish your paper?

**ANSWER**

*Yes.*

**QUESTION**

Did you think that was unfair?

ANSWER

*Yes.*

The discriminatory behavior continued over the course of many months even into the 2017, and 2018, school years. For example in 2018, the District forced D.M. to watch a movie in his classroom, and in movie the White people were calling the Black people, "***nigger's***," **threw banana peelings at the Blacks, and called the Blacks monkeys and savages**. (CP 709 - 832, page 3, paragraph 3). The District showed the movie knowing D.M. and one other student were the only Black's, in the class. The District did not dispute the D.M.'s deposition deposition testimony cited.

No resolution was reached and the low reading and teaching had a devastating impact on D.M. learning and on him emotionally. In D.M.'s Guardian Ad Litem's, report his opinion was that he believed D.M. was injured. (CP 676 - 679).

On or about May 17, 2018, a whole full year twelve (12) months after Steven, filed her five (5) grievances with the Federal Way School District, in an investigative report conducted by an attorney retained by the District, Ms. Jennifer Parda-Aldrich, of "Sebris Busto James". Ms. Parda-Aldrich was retained to investigate Steven's five grievances she alleged, that the District falsely represented they conducted thorough internal investigations. Steven alleged the District conducted invalid investigations of her five (5) grievances. (CP 1203 - 2119, Ex: 114)

Ms. Parda-Aldrich's, September 14, 2018, "Factual Findings," in her investigation revealed that Ms. Weiser, and Ms. Stromberg, admitted they "***did not mark all the kids who walked in after the bell tardy***." (CP 1203 - 2119, Ex: 114, pg. 1)

Steven would like to point out for the record Ms. Parda-Aldrich's, was retained by the District on or about May 17, 2018, to investigate allegations asserted against the District by Steven. Steven alleged the District falsely represented that it had conducted an investigation on her and D.M.'s five (5) grievances and five (5) appeals of those grievances alleging discrimination. (CP 1203 - 2119, Ex: 114, pg. 1)

In Ms. Parda-Aldrich, interview with Dr. Meisenburg, who was the interim Principal at the time stated during his interview that Stromberg and Weiser (*the office staff who sat at the window*) told him the following below: (CP 1203 - 2119, Ex: 114, pg. 7, line 14 - 16).

> "So the practice had been that once the bell rang, if children were walking in the main entrance, [Ms. Wieser and Ms. Stromberg] would note the fact that they were in fact tardy and they would mark them as tardy. That's what [Ms. Wieser and Ms. Stromberg] told me.
>
> "**We're marking all kids who come in through the front entrance.**"
>
> "**Are we marking all the kids who are walking in after the bell tardy? No, we're not.**"

In 2018, Steven's public request records went under camera review, in Steven's, Complaint for Judicial Review of Agency Action, and for Attorney Fees and Penalties Under RCW 42.56. Superior Court of the State of Washington, Case #18-2-18106-2KNT, before the honorable, Cheryl B. Carey.

Steven alleged Federal Way District conducted invalid investigation. In Steven's records they provided to Steven from her public records request Steven received from the District approximately a total of one hundred and thirty five (135) records that were completely blacked out or blank corner to corner. (**Appendix K**). This case was settled between the two parties January 2019. Steven did not re-litigate this issue in her 2019 lawsuit. There is no matter of law in Washington state for invalid investigations.

On October 19, 2020, Steven, moved for penalties against the District, because their attorney's, Patricia Buchanan, and Haley Moore for alleged violation of Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portablity and Accountability Act (HIPAA). Steven asked the Court to conduct an in camera review of all records Steven has provided the court and for statutory penalties in the amount of per day for each document improperly obtain by the District's attorney's Ms. Patricia Buchanan, and Ms. Haley Moore.

The District's attorney's Patricia Buchanan, and Haley Moore, have provided in their Responses to Plaintiff Steven's Requests for Production, Plaintiff Steven's and D.M.'s, personal identifiable information, education records and health care information, etc.,

*bates-numbered FWSD000852* through *FWSD 001038*. Steven did not sign a Release, for records to be given to the District's attorney's for D.M.'s medical records, schools records, nor school nurse's records. The District in their bates-numbered discovery to Steven produced D.M.'s, school records, and school nurses records.

## REASONS FOR GRANTING THE PETITION

The Court got Steven's decision below which is a very crucial issue catastrophically wrong. At know time in our country should discrimination be considered a legitimate way to treat anyone whether adult and/or child, at a hotel nor a restaurant nor a parent nor student/child at any school.

I believe when the alleged discrimination falls within the walls of a government public school a line has been crossed and the allegations are critical and should be taken seriously. Especially if that discrimination starts before a child's brain has developed and is in the process of the most crucial developmental years of a childs life.

A Black parent should not be subjected to discrimination in securing education for their child nor should they be required to enter a side and/or alternate door as the Black's were required before when their were know discrimination laws in place. It is the public policy of Washington state to protect and ensure student's and their parents are treated fair no matter their color. Black parent's and their student's should be allowed to enter in the front doors as do non-Black

parent's and their students without being punished. That is the meaning of non-segregated schools.

RAP 9.12 is not designed to allow escape of the repercussions of alleged discrimination in a public school if evidence is on the record before summary judgment that will show genuine issues of material fact, material factual issues for trial and meeting all causes and requirements like in Steven's prima facie. RAP 1.2(a) should be considered as the rule reads as to promote justice.

The "*Burnet Rule*" was rephrased, regarding late submitted declarations on summary judgment. *Burnet v. Spokane Ambulance*, 131 Wash. 2d. 484, 505, 933 P.2d 1036, 1046 (1997), as amended on denial of reconsideration (June 5, 1997). On September 22, 2020, Steven and the District had the pretrial hearing and the pretrial order was issued before the order granting summary judgment. At summary judgment the District did not dispute any deposition testimony nor evidence.

Under the Federal Rule a summary judgment cannot be granted if the moving party does not show they are entitled to it. *Keck v. Collins*, 184 Wash. 2d 358, 357 P.3d 1080 (2015). The Court of Appeals and Washington State Supreme Court affirmed the trial court's order granting summary judgment on RAP 9.12, not on the evidence and facts of Steven's case and that Steven presented. Steven's evidence is on the trial court record before a summary judgment. Steven designated the record from the trial court to the court of appeals. The dates of the filing and serving of

Steven's evidence is easily verified via the Court Clerk's Office.

Every issue Steven raised at trial court Steven raised at the Court of Appeals. The District did not dispute Steven's nor D.M.'s deposition testimony in the trial court. Steven notified the trial court and the District at the summary judgment hearing following below:

> **"The deposition testimony of D.M., cited herein should not be disputed and if it is, the September 4, 2020, transcript will be available and certified on or about October 9, 2020, and D.M.'s September 11, 2020, transcript of events pertaining to the allegations set forth as they relate to remaining claims of Plaintiff Steven will available on or about October 9, 2020."**

If a child and a parent of a child is alleging they are being targeted due to race during the child's/student's elementary and middle school years. The United States of American, should press the re-set button, because Steven, alleges our country has with intent traveled backwards toward and before (*like a time machine*) to the *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955).

RAP 9.12, nor *Celotex* should not have the authority to overrule the Equal Protection Clause of the Fourteenth Amendment, Constitution, any other

applicable Amendments nor the McDonnell Analysis. *Celotex* and *CR 56* should be applied properly whether the non-moving party of CR 56 is an attorney or a pro se litigant.

Steven asks this Court to look at the Defendant's, Federal Way School District, Motion for Summary Judgment. (**Appendix I**). Steven's alleges this filed Motion for Summary Judgment, demonstrates and proves that the treatment of her as a parent and her child as a student, as they interact with the administrators and staff of their public school has traveled backwards in a time machine Steven, mentioned above and did so knowingly and with intent.

The District filed motion for summary judgement does not even provide Steven the courtesy of including her remaining claims of her alleged discrimination and claims. Defendant's summary judgment was granted on D.M. allegedly not meeting of his prima facie. (**Appendix I, App. 35, App. 36**).

Steven asks this Court to look at the November 1, 2021, Opinion (**Appendix E**). In Steven's trial court, the defendant's motion for summary judgment, as stated above is on D.M.'s alleged failure of showing a prima facie. Now if this Court looks at the November 1, 2021, Court of Appeals Opinion, this opinion is based on Steven's remaining claims and Steven allegedly not meeting her prima facie.

The question is for Steven and hopefully this Court, is if the Court of Appeals state in their Opinion (**Appendix E, App 14, 2nd paragraph**) the following below:

> *"We review an order granting summary judgment de novo and perform the same inquiry as the trial court."*

The trial court and the court of appeals are in conflict, because the District's filed motion for summary judgment is on D.M.'s, prima facie and the District knew D.M.'s claims were settled and Steven's claims were the only claims remaining.

The Court of Appeals Opinion is more on Steven's prima facie, however how did the Court of Appeals get to Steven's prima facie we the order granting summary judgment did not perform an inquiry on Steven meeting her prima facie. The trial court did not perform the inquiry on Steven's prima facie on her remaining claims, because the District in their Motion for Summary Judgment did not motion the court to do so.

The district's summary judgment states the following below:

> *"Ms. Steven unequivocally fails to make prima facie showing of the third and fourth elements of her discrimination claims; specifically; (3)* ***that the District treated D.M. differently than similarly situated students; and (2) that D.M.'s race was a substantial factor in his being marked tardy or absent at school, reading assignments, and treatment by other student's.***" **(Appendix I, App. 36, 2nd paragraph).**

The above does not reference, allege nor show how Steven failed on her remaining claims nor her prima

facie. So, therefore, how does the Court of Appeals, and Washington State Supreme Court do so and affirm the Court of Appeals Opinion and deem Steven's Court of Appeals Opening Brief as containing extraneous evidence?

The Court of Appeals Opinion states the following below:

> "But the nonmoving party bears the burden of establishing that a prima facie case exists on all elements of their alleged claims." **(Appendix E, App. 14, 2nd paragraph).**"

Steven alleges the Court of Appeals did not address all of her issues she brought forth. Steven orally argued the above issue at trial court. The court did not address nor acknowledge this issue. Verbatim Reportings **(Appendix J, App. 41, 2nd paragraph), (Appendix L, App. 49, App. 50.)**

The District, did not show Steven did not meet her prima facie and that is due to Steven's comparator, stating she did not receive truancy notices nor mandatory truancy conferences.

The Respondent's refused to agree to stipulate to any materials and evidence they alleged was deficient and were citations. On July 13, 2021, Steven filed with the trial Court (the Court and judge that granted summary judgment) a timely motion for supplemental of the trial court order granting summary judgment. August 9, 2021, the Court denied Steven's motion for supplemental of the trial court order granting summary judgment. The Court cited the following below for its ruling:

*"The court's Order Granting Defendant's Motion for Summary Judgment filed under Dkt. No. 131 correctly identifies the documents and pleadings the court considered in making its decision on Defendant's Motion for Summary Judgment."*

August 16, 2021, Steven objected to the Court's denial of her motion and filed with the Court of Appeals, RAP 9.13, a Motion for Review of the Decision Relating to the Record. Steven, stated RAP 9.12, clearly specifies "Documents of other evidence **called to the attention of the trial court** but not designated in the order shall be made part of the record by supplemental order of the trial court or by stipulation." RAP 9.12, does not state "**considered in making its decision**."

September 8, 2021, 23 (twenty-three) days after Steven filed her motion of review of the decision relating to the record the Court of Appeals ruled "Respondent's shall file a response to the RAP 9.13 motion by September 13, 2021. September 13, 2021, the Respondent's filed their Response to RAP 9.13 Motion, alleging there is no basis for Steven's Objection to the trial court's decision, Steven does not set forth which documents should have been supplemented and that Steven's brief is deficient. Respondent's showed no facts nor evidence that Steven's brief's are deficient and that Steven Opening Brief contained extraneous evidence. Respondent's response to Response to RAP 9.13 Motion, is their own conclusory opinion/ allegations.

September 15, 2021, the Court of Appeals, Commissioner, denied Steven's motion of review of the decision relating to the record stated "Steven has failed

to show error in the trial court's August 9, 2021 order denying her motion to supplement the record."

September 24, 2021, Steven filed a motion to modify review of the decision relating to the record. Steven showed the Court all documents, deposition transcripts and deposition testimony pointed to the trial court that is timely already been designated and transmitted to the Court of Appeals, prior to Steven's designation of clerk papers due date. However, some of the documents are not listed on the trial court's order granting summary judgment. Steven timely motioned the trial court for supplemental of the trial court order granting summary judgment. Steven showed documents to be supplemented.

October 14, 2021, the Court of Appeals Commissioner denied Steven's Motion to Modify. The Order Denying Steven's Motion to Modify was filed before the Court reviewed Steven's October 18, 2021, Reply to Respondent's Response to Appellant's Steven's Motion to Modify Review of the Decision Relating to the Record.

The court and parties had their Pretrial Conference and the Court allowed additional deposition of Steven's witness D.M. for Steven's remaining claims. Respondent's, did not dispute at trial court and these documents and evidence are very relevant materials to prove Steven's case and some evidence was obtained via discovery.

Appellant's Opening Brief, (**Op. Br.** 4) is a document and reference to a document/email that is on the trial court record before Respondent's summary

judgment and properly and timely designated. This document is in Steven's (**CP 1203 - 2119, Ex: 2**) and was filed with the trial court May 5, 2020, part of the trial court record, filed with the trial Court Clerk's office, and "Working Copies," were delivered to the Court/Judge and with affidavits and sworn statements, and under penalty and perjury under the laws of the State of Washington. Additionally, this identical document is also in Steven's (CP 857 - 882, Exhibit 2 to Steven's Declaration and Exhibit List.) Steven did properly renote her summary judgment. All documents and evidence the District is claiming is extraneous is in Steven's Exhibit List.

As Steven pointed to in her Response, brief, she showed the deposition transcript/testimony that was indeed part of the materials and evidence called to the trial court. (Res. Br. 6 - 7).

It is an error to construe RAP 9.12, for what it is not intended for. RAP 9.12, is for an argument that was not pleaded nor argued to the trial court cannot be raised for the first time on appeal. This is not the case with Steven, because at the trial court Steven's, argument and pleading are the same

Rap 9.12 is the special rule on motion for summary judgment this court will only consider the issues and evidence called to the attention of the trial court. If documents and other evidence called to the attention of the trial court before the order on summary judgment was entered they shall be made part of the record by supplemental order of the trial court or stipulation of counsel/parties. Respondent's, refused to stipulate the documents and evidence that was called to the

attention of the trial court. Steven, was not afforded the opportunity to present the court with her draft of the order granting summary judgment to be signed and entered.

The Court of Appeals review summary judgment order de novo, "engaging in the same inquiry as the trial courts." *ID* (quoting *Afoa v. Port of Seattle*, 176 Wn.2d 460, 466, 296 P.3d Wn. App. 813, 825, 385 P.3d 800 (2013)). The Court of Apeals "We may affirm on any basis supported by the record." *Bavand v. OneWest Bank*, 196 Wn.App. 813, 825, 385 P.3d 233 (2016). All Steven's record besides Steven's Motion for Reconsideration is submitted to the trial court before the trial court and appellant court made the ruling that are on discretionary review. Respondent's did not file a motion to strike at the trial court. *Cameron v. Murray*, 151 Wash.App. 646, 658, 214 P.3d 150 (2009). The Court of Appeals rules of the procedure allow a party to designate "those clerk's papers and exhibit's the party wants the trial clerk to transmit to the appellate court. All of Steven's designations are correctly aligned with the RAP Rules of the designaton of the record.

Per Steven's court case schedule she timely filed with the King County Superior Court Clerks Office and served the Federal Way School District before summary judgment her *bates-numbered* exhibit list and witness list. Steven timely designated the court records. The Federal Way School District did not dispute nor object to Steven's exhibit list nor witness list. The exhibit and witness list support Steven's allegation's and are the identical documents the

Federal Way School District state are extraneous evidence.

RAP 1.2(a) state the "rules will be liberally intrepreted to promote justice and facilitate the decision of cases on the merits." Steven's case is appropriate for the court to exercise its discretion because of the widespread problems with pro se litigants and law.

In *State v. Aho*, 137 Wash.2d 736, 740-41, 975 P.2d 512 (1999), held the Supreme Court has the authority to determine whether a matter is properly before the court, to perform those acts which are actual and firm and of well ordered for review. Per the rule Steven is raising this claim to "manifest error affecting a constitutional right." RAP 2.5(a).

In *Mithoug v. Appollo Radio of Spokane*, 128 Wash. 2d 460, 909 P.2d 291 (1996), holding the Court of Appeals was apparently of the view RAP 9.12 and the caselaw on summary judgments limit appellate review to evidence "considered" by the trial court. This is not RAP 9.12 actually says. Rather, it says that the trial court in its order "shall designate the documents and other evidence *called to the attention of the trial court* before the order on summary judgment was entered." (Emphasis added.) "The purpose of this limitation is to effectuate the rule that the appellate court engages in the same inquiry as the trial court." *Washington Fed'n of State Employees v. Office of Financial Mgt.*, 121 Wash.2d 152, 157, 849 P.2d 1201 (1993).

Steven's had deposition testimony attached to her declaration in her opposition to Defendant's Motion for

Summary Judgment. The Court for the second time authorized and extended the discovery cut-off date to September 19, 2020 to provide the District additional time to depose Steven's witness D.M., after the discovery cut-off date knowing summary judgment was scheduled for October 9, 2020.

Steven stated in her opposition to summary judgment the following below:

> "**The deposition testimony of D.M., cited herein should not be disputed and if it is, the September 4, 2020, transcript will be available and certified on or about October 9, 2020, and D.M.'s September 11, 2020, transcript of events pertaining to the allegations set forth as they relate to remaining claims of Plaintiff Steven will available on or about October 9, 2020.**"

The District did not dispute D.M. nor Steven's depositions at trial court.

In *Keck v. Collins*, 184 Wash. 2d 358, 375 P.3d 1080 (2015), hold that the trial court must consider the factors form *Burnett v. Spoke Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997), on the record before striking evidence. The trial court abused its discretion because it failed to consider the Burnet factor. The Trial court, Court of Appeals and Washington state Supreme court failed to consider the *Burnett* factors, in Steven's case. The trial court and court of appeals must consider factor's that a non-moving party will not lose their day in court if they have facts and valid claims. The Court allowed additional discovery per request of the District.

If additional discovery is allowed it is most likely allowed to be used in defending and/or supporting summary judgment. In RAP 1.2(a) and Civil Rules 1 decides the cases on their quality.

## CONCLUSION

For the aforementioned reasons, this Court should grant the petition.

Respectfully submitted,

PAULA STEVEN, pro se
P.O. Box 4071
Federal Way, Washington 98063
(253) 709-3487

*Pro Se Petitioner*

Dated: June 24, 2022

# APPENDIX

# APPENDIX

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## APPENDIX A

## THE SUPREME COURT OF WASHINGTON

**No. 100393-5**

**Court of Appeals**
**No. 82042-7-I**

**[Filed: March 30, 2022]**

| | |
|---|---|
| PAULA STEVEN, | ) |
| | ) |
| Petitioner, | ) |
| | ) |
| v. | ) |
| | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| | ) |
| Respondent. | ) |
| | ) |

### ORDER

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener, considered this matter at its March 29, 2022, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied.

DATED at Olympia, Washington, this 30th day of March, 2022.

For the Court

/s/ González, C.J.
CHIEF JUSTICE

## APPENDIX B

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

**No. 1 0 0 3 9 3 - 5**

**Court of Appeals No. 82042-7-I**

**[Filed: January 13, 2022]**

| | |
|---|---|
| PAULA STEVEN, | ) |
| | ) |
| Petitioner, | ) |
| | ) |
| v. | ) |
| | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| | ) |
| Respondent. | ) |
| | ) |

RULING DENYING REVIEW

Pro se petitioner Paula Steven seeks review of a decision by Division One of the Court of Appeals denying Ms. Steven's motion objecting to a King County Superior court order denying her motion to supplement a summary judgment order underlying her appeal. *See* RAP 9.13 (objection to trial court decision relating to record). The motion for discretionary review is denied for reasons explained below.

Ms. Steven, acting individually and on behalf of her son, sued respondent Federal Way School District (the district) for discrimination, negligence, retaliation, and loss of consortium. Ms. Steven filed a summary judgment motion but the court struck that motion, the district's summary judgment motion, and all discovery motions, all without prejudice, pending appointment of a guardian ad litem (GAL) for Ms. Steven's son. The court directed the parties to re-note their motions after consultation with the GAL. The claims concerning Ms. Steven's son were settled after the guardian ad litem was appointed. It appears Ms. Steven did not properly re-note her motion for summary judgment, therefore the superior court never acted on it. The district re-noted its motion for summary judgment as to Ms. Steven individually and the superior court granted it.

Ms. Steven appealed. While the appeal was pending, Ms. Steven filed a motion objecting to the superior court's order denying her motion to supplement the summary judgment order with materials she presented in relation to her summary judgment motion. RAP 9.13. A Court of Appeals commissioner denied the motion. A panel of judges denied Ms. Steven's motion to modify the commissioner's ruling. A couple of weeks later, on November 1, 2021, the Court of Appeals issued an unpublished decision affirming the summary judgment order. The court denied reconsideration on November 30, 2021. Ms. Steven has filed a petition for review in this court. No. 100530-0.

Meanwhile, Ms. Steven filed the instant motion for discretionary review, challenging denial of her RAP

9.13 motion. The school district opposes review. The parties argued their respective positions at a telephonic hearing held on January 12, 2022.

To obtain discretionary review in this court, Ms. Steven must demonstrate that the Court of Appeals committed obvious error that renders further proceedings useless or that committed probable error that substantially alters the status quo or that substantially limits a party's freedom to act, or that the Court of Appeals decision departs so far from the accepted an usual course of judicial proceedings as to justify this court's review. RAP 13.5(b). She fails to meaningfully address these criteria, other than to say that the Court of Appeals erred.

There is no obvious or probable error in any event. There is no apparent violation of RAP 9.12 with respect to documents and evidence called to the attention of the superior court before it granted the district's motion for summary judgment order. It is Ms. Steven's position that the superior court also considered her summary judgment papers, but the only matter properly before the court at that time was the district's motion for summary judgment; therefore, Ms. Steven's summary judgment materials were not brought to the court's attention in relation to the district's motion for summary judgment. Again, the Court of Appeals did not err in denying the RAP 9.13 motion, and nothing in the Court of Appeals decision indicates a reviewable departure from the accepted and usual course of judicial proceedings.

The motion for discretionary review is denied.

/s/ [Illegible Signature]
COMMISSIONER

January 13, 2022

## APPENDIX C

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
**DIVISION ONE**

**No. 82042-7-I**

**[Filed: November 30, 2021]**

| | |
|---|---|
| PAULA STEVEN, individually, and as a parent and guardian of D.M., a minor, | ) |
| Appellant, | ) |
| v. | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| Respondent. | ) |

ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Steven has filed a motion for reconsideration of the court's opinion filed November 1, 2021. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

/s/ [Illegible Signature]

/s/ [Illegible Signature] /s/ [Illegible Signature]

## APPENDIX D

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
**DIVISION ONE**

**No. 82042-7-I**

**[Filed: November 30, 2021]**

PAULA STEVEN, individually, and as a parent and guardian of D. M., a minor,

Appellant,

v.

FEDERAL WAY SCHOOL DISTRICT,

Respondent.

ORDER DENYING MOTION TO PUBLISH OPINION

Appellant Steven has filed a motion to publish the court's opinion filed November 1, 2021. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion to publish is denied.

/s/ [Illegible Signature]

/s/ [Illegible Signature] /s/ [Illegible Signature]

## APPENDIX E

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
**DIVISION ONE**

**No. 82042-7-1**

**[Filed: November 1, 2021]**

| | |
|---|---|
| PAULA STEVEN, individually, and as a parent and guardian of D. M., a minor, | ) |
| Appellant, | ) |
| v. | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| Respondent. | ) |

UNPUBLISHED OPINON

VERELLEN, J. — Paula Steven challenges the trial court's grant of summary judgment in favor of the Federal Way School District. Steven argues that she established a prima facie case sufficient to proceed to trial on her claims for discrimination, negligence, retaliation, and loss of consortium. But because our review is limited to the evidence that was "called to the attention of the trial court," and Steven relies upon

"speculation" and "bare assertions," summary judgment was proper.

Therefore, we affirm.

## FACTS

In 2016, Paula Steven's son, D. M., was a student at Lakeland Elementary School located in the Federal Way School District (the District). After D. started third grade, Steven complained he "was the victim of selective and discriminatory" practices by the District.[1] Specifically, D. told Steven that he was being treated differently at school than other "non-Black" students.[2] As a result, between 2016 and 2018, Steven sent various letters to office administrators at Lakeland asserting multiple allegations of unfair treatment.

On June 21 , 2019, Steven filed a complaint against the District on behalf of herself and her son D. alleging discrimination, negligence, retaliation, and loss of consortium. Steven's primary allegation is that D. "was the victim of selective and discriminatory . . . attendance recording practices" which "generated chronic absence truancy letters and mandatory attendance conferences."[3] All claims against the District on behalf of D. have been settled.

In September 2020, the District filed for summary judgment on Steven's individual claims. At oral

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[1] Clerk's Papers (CP) at 737.

[2] CP at 739.

[3] CP at 736-48.

argument, the trial court stated, "I have lots of letters from you and declarations from you showing that you are reaching out to people, but what I don't have are anything that show definitively that [D.] was treated differently than other kids, or that you were treated different than other parents."[4] The court granted the District's summary judgment motion.

Steven appeals.

## ANALYSIS

On summary judgment, "our review is limited to evidence and issues called to the attention of the trial court."[5] The order granting or denying summary judgment "shall designate the documents and other evidence" that the trial court reviewed.[6] And the nonmoving party cannot rely upon materials outside of those "called to the attention of the trial court" to establish that genuine issues of material fact exist.[7]

Here, on summary judgment, the trial court considered the following: (1) the District's motion for summary judgment, (2) Steven's opposition to the

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[4] Report of Proceedings (RP) (Oct. 9, 2020) at 27-28.

[5] Tacoma S. Hospitality, LLC v. Nat'l Gen. Ins. Co., No. 55168-3-II, slip op. at 10 (Wash. Ct. App. 2021), https://www.courts.wa.gov/opinions/pdf/D2%2055168-3-II%20Published%20Opinion.pdf (citing RAP 9.12).

[6] Green v. Normandy Park, 137 Wn. App. 665, 678, 151 P.3d 1038 (2007) (quoting RAP 9.12).

[7] See id.

District's motion for summary judgment, (3) Steven's declaration in opposition to the District's motion for summary judgment, including exhibits 1 to 22, (4) the District's reply in support of its motion for summary judgment, (5) the District's praecipe,[8] and (6) oral argument.

We review an order granting summary judgment de novo and perform the same inquiry as the trial court.[9] "In conducting this inquiry, we must view all facts and reasonable inferences in the light most favorable to the nonmoving party."[10] But the nonmoving party bears the burden of establishing that a prima facie case exists on all elements of their alleged claims.[11] The nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or having its affidavits considered at face value."[12] And "bare assertions" will not defeat a summary judgment

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[8] The court mislabeled the "praecipe" on its order granting the District summary judgment as "plaintiff's praecipe" instead of "defendant's praecipe." CP at 840, 854; Resp't's Br. at 6.

[9] Sisley v. Seattle Sch. Dist. No. 1, 171 Wn. App. 227, 234, 286 P.3d 974 (2012) (citing Mohr v. Grant, 153 Wn.2d 812, 821, 108 P.3d 768 (2005)).

[10] Seiber v. Poulsbo Marine Ctr., Inc., 136 Wn. App. 731, 736, 150 P.3d 633 (2007).

[11] Sisley, 171 Wn. App. at 234.

[12] Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986) (citing Dwinell's Cent. Neon v. Cosmopolitan Chinook Hotel, 21 Wn. App. 929, 587 P.2d 191 (1978)).

motion.[13] Instead, the nonmoving party "must set forth specific facts showing that genuine issues of material fact exist."[14]

First, Steven argues that she and D. were subjected to discrimination by Lakeland employees, teachers, and staff who all "openly treated both [her] and D. who were Black less favorable than white students and parents."[15]

The Washington Law Against Discrimination provides that the state "shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."[16] To establish a prima facie case of discrimination the plaintiff must show: (1) the plaintiff is a member of a protected class, (2) the defendant's place of business is a place of public accommodation, (3) the plaintiff was treated differently than similarly situated individuals outside the plaintiff's protected class, and (4) the plaintiff's

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[13] SentinelC3, Inc. v. Hunt, 181 Wn.2d 127, 140, 331 P.3d 40 (2014) (quoting CR 56(e); Bernal v. Am. Honda Motor Co., 87 Wn.2d 406, 412, 553 P.2d 107 (1975)).

[14] Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc., 114 Wn. App. 151, 157, 52 P.3d 30 (2002) (citing CR 56; Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989); Seybold v. Neu, 105 Wn. App. 666, 676, 19 P.3d 1068 (2001)).

[15] Appellant's Br. at 50.

[16] RCW 49.60.400(1).

protected status was a substantial factor in causing the discrimination.[17]

Here, Steven's discrimination claim focuses on her allegations that she and D. were treated differently than "non-Black" parents and students regarding assertions by the District of "chronic tardies."[18] Specifically, in her opening brief, Steven alleges that she "provided comparators" and that based upon those "comparators," she established a causal connection between her and D.'s status as a Black parent and student and the disparate treatment they received.[19]

In support of her contention, Steven offers general assertions in her opening brief that she spoke with a

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[17] See Kirby v. City of Tacoma, 124 Wn. App. 454, 468, 98 P.3d 827 (2004); Fell v. Spokane Transit Auth., 128 Wn.2d 618, 637, 911 P.2d 1319 (1996); Hartleben v. Univ. of Washington, 194 Wn. App. 877, 883-84, 378 P.3d 263 (2016).

[18] Appellant's Br. at 21-32. Steven also alleges that she and D. were subjected to discrimination at Lakeland because the faculty failed to call on D. to answer academic questions because he was Black, the faculty incorrectly had D. reading at a first grade level, a faculty member pulled the back of D.'s jersey when he was running in the hallway, and the faculty made D. watch a movie that was discriminatory. But those claims were the subject of the settlement. And in her deposition, Steven acknowledged that the District corrected D.'s attendance records but asserted that the "big issue" was that she "felt like [the attendance practices were] discriminatory" and that D. and her were treated differently than other "nonwhite students and parents," and that they were being "racially profiled" because of the way they entered the school. CP at 831-32.

[19] Appellant's Br. at 52.

Caucasian parent who always arrived to Lakeland with her son after Steven and D., and the Caucasian parent confirmed that her and her son "had not been subjected to her son's attendance being changed . . . nor was she in receipt of notices regarding her son's attendance, [and] she also did not receive emails [sent] to her son's teacher [instructing the teacher] to monitor her and her son in the mornings."[20] But Steven's only citations to the record in support of her alleged "comparator" are to letters she sent to various administrators at Lakeland recounting her conclusory allegations of disparate treatment and references to documents that were not before the trial court on summary judgment.[21] Because Steven's claimed "comparator evidence" is based upon "vague assertions" and "speculation," she fails to provide specific facts supporting a prima facie case of her discrimination claim.

Second, Steven alleges that the District acted negligently in responding to and investigating her

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[20] Appellant's Br. at 7.

[21] Appellant's Br. at 9, 13-15, 17. The majority of the exhibits Steven attaches to her declaration are letters she sent to various administrators at Lakeland detailing her allegations of disparate treatment. But again, the letters present no evidence of her alleged "comparator" to support her contention that any disparate treatment actually occurred. For example, in her letter to the principal and the interim principal on October 25, 2016, Steven alleges, "When I initially contacted you I did not just believe the staff treated me and my son improperly regarding tardies. I knew for a fact that we were/are being subjected to unfair education practices, racially profiled, and discrimination. They also singled us out and treated us differently than other non-Black students and parents." CP at 782. See also CP at 779, 785, 800, 807.

complaints of discrimination. To establish a prima facie case of negligence, the plaintiff must show: (1) that the defendant owed the plaintiff a duty of care, (2) that the defendant breached that duty, (3) that injury to the plaintiff resulted, and (4) that the defendant's breach proximately caused the plaintiff's injury.[22]

Here, the District interpreted Steven's negligence claim as a negligent investigation claim, but at summary judgment, the trial court dismissed Steven's negligent investigation claim based upon her own "affirmation" that negligent investigation was not the type of negligence claim she intended to present.[23] Instead, in her opening brief, Steven contends that the District failed to "exercise ordinary care [in their actions] toward" her and D. and that the District did not act as a "careful person" would have "under the same or similar circumstances."[24] In her reply brief, she clarifies that she is alleging that the District failed to take prompt and effective steps necessary to end the ongoing harassment she and D. experienced.[25] But Steven does not establish any questions of fact regarding a breach of duty by the District. And because she provides no citations to the record and instead relies only on "bare assertions," Steven again fails to

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[22] Seiber, 136 Wn. App. at 738 (citing Hoffstatter v. City of Seattle, 105 Wn. App. 596, 599, 20 P.3d 1003 (2001)).

[23] RP (Oct. 9, 2020) at 9-10, 23-24.

[24] Appellant's Br. at 51-52.

[25] Appellant's Reply Br. at 22.

present specific facts to establish a prima facie case of her negligence claim.[26]

Steven also argues that she established a prima facie case of retaliation.[27] But, on th is record, there are no facts to establish any adverse treatment of Steven. And any facts supporting the claim that the District retaliated against D. were the subject of the settlement.

Additionally, Steven contends she established a prima facie case of loss of consortium under RCW 4.24.010 based upon her general allegations of emotional injury.[28] But because this claim is not supported by any tangible evidence or expert opinions regarding the existence of an injury or causation, it fails.

Steven further claims that the trial court erred in denying her motion for reconsideration.[29] But because her argument on appeal regarding her motion for reconsideration is a one sentence assertion, her

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[26] Steven also argues that the trial court failed to rule on her motion for discovery sanctions. Appellant's Br. at 54-55. But she fails to establish she preserved this issue by alerting the trial court that the motion had not been resolved and does not offer any meaningful argument that sanctions were warranted.

[27] Appellant's Br. at 51-52.

[28] Appellant's Br. at 51-52.

[29] Appellant's Br. at 2, 53.

argument is inadequately briefed and insufficiently argued.[30]

Therefore, we affirm.

/s/ [Illegible Signature]

WE CONCUR:

/s/ [Illegible Signature] /s/ [Illegible Signature]

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[30] See Appellant's Br. at 2; RAP 10.3(a)(6).

## APPENDIX F

**THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
**DIVISION ONE**

**No. 82042-7-I**

**[Filed: October 14, 2021]**

| | |
|---|---|
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| | ) |
| Respondent, | ) |
| | ) |
| v. | ) |
| | ) |
| PAULA STEVEN, | ) |
| | ) |
| Appellant. | ) |
| | ) |

ORDER DENYING MOTION TO MODIFY

Appellant Paula Steven moves to modify the commissioner's September 14, 2021 ruling denying her RAP 9.13 Motion for Review of the Decision Relating to the Record. We have considered the motion and the Respondent Federal Way School District's response under RAP 17.7 and have determined that the motion should be denied. Now, therefore, it is

ORDERED that the motion to modify is denied; it is further

ORDERED that the Federal Way School District's request for sanctions under RAP 18.9 is also denied.

/s/ [Illegible Signature]

/s/ [Illegible Signature] /s/ [Illegible Signature]

## APPENDIX G

***The Court of Appeals***
***of the***
***State of Washington***

**[Dated: September 15, 2021]**

LEA ENNIS
*Court Administrator / Clerk*

DIVISION I
One Union Square
600 University Street
Seattle, WA
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September 15, 2021

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Paula Steven
PO Box 4071
Federal Way, WA 98063

Case #: 820427
Federal Way School District, Respondent v. Paula Steven, Appellant
King County Superior Court No. 19-2-16487-5

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on September 14, 2021, regarding Appellant's Motion for Review of the Decision Relating to the Record:

Appellant Paula Steven has filed a RAP 9.13 motion objecting to the trial court's August 9, 2021 order denying her motion to supplement its summary judgment order. In denying Steven's request to supplement the record, the trial court stated that its summary judgment order "filed under Dkt. No. 131 correctly identifies the documents and pleadings the court considered in making its decision on Defendant's Motion for Summary Judgment."

In her RAP 9.13 motion, Steven suggests that the trial court's reference to materials it "considered in making its decision" does not include other materials "called to the attention of the trial court." See RAP 9.12. Steven claims that Respondent Federal Way School District did not dispute the materials she submitted to the trial court "before summary judgment not at the summary judgment hearing"; that the materials at issue "are part of the trial court record"; and that such materials are relevant to prove her case.

However, as the District points out it its response, Steven does not specifically or sufficiently describe which particular documents she believes that the trial court erroneously omitted from its summary judgment order. In fact, it appears that certain documents that Steven sought to have included in the summary judgment order - such as her own summary judgment

motion, D.M.'s deposition testimony, and her own deposition testimony - were not actually presented to the trial court or considered at the time of the District's summary judgment motion.

Under these circumstances, Steven has failed to show any error in the trial court's August 9, 2021 order denying her motion to supplement the record. Her objection is therefore denied.

Sincerely,

/s/ Lea Ennis
Lea Ennis
Court Administrator/Clerk

jh

## APPENDIX H

**SUPERIOR COURT OF WASHINGTON**
**FOR KING COUNTY**

**No. 19-2-16487-5 KNT**

**[Filed: August 9, 2021]**

| | |
|---|---|
| PAULA STEVEN, individually and as a parent and guardian of the of D.M., a minor, | ) |
| Plaintiff, | ) |
| v. | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| Defendant. | ) |

ORDER DENYING PLAINTIFF'S MOTION TO SUPPLEMENTAL OF THE TRIAL COURT's ORDER GRANTING SUMMARY JUDGMENT

THIS MATTER having come on regularly before this Court on Plaintiff's (sic) Motion for Supplemental of the Trial Court's Order Granting Summary Judgment ("Plaintiffs' Motion"). The court having reviewed the Motion and pleading filed in support of Plaintiffs' Motion.

IT IS HEREBY ORDERED that Plaintiffs' Motion is **DENIED.** The court's Order Granting Defendant's Motion for Summary Judgment filed under Dkt. No. 131 correctly identifies the documents and pleadings the court considered in making its decision on Defendant's Motion for Summary Judgment.

DONE IN OPEN COURT this 6th day of August, 2021.

/s/ Nicole Gaines Phelps
Judge Nicole Games Phelps

## APPENDIX I

Hon. Nicole Gaines Phelps
Hearing Date/Time: October 9, 2020 at 9:00 a.m.

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

**No. 19-2-16487-5 KNT**

**[Dated: October 9, 2020]**

| | |
|---|---|
| PAULA STEVEN, individually and as a parent and guardian of the of D.' M., a minor, | ) |
| Plaintiff, | ) |
| v. | ) |
| FEDERAL WAY SCHOOL DISTRICT, | ) |
| Defendant. | ) |

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

## I. INTRODUCTION AND RELIEF REQUESTED

Defendant Federal Way School District ("the District") moves for summary judgment to dismiss Plaintiff Paula Steven's remaining claims in their entirety with prejudice following resolution of minor D.'

M.'s claims.[1] After more than adequate time for discovery, Ms. Steven has unequivocally failed to establish essential elements of her claims. The entire body of support for her claims are based on her own self-serving opinions and speculation, devoid of any supporting evidence. Ms. Steven has an unavoidable failure of proof concerning all claims. Absent prima facie showing of even a single element there can be no genuine issue of material fact by definition per *Celeotex*. Thus, summary judgment is appropriate.

## II. STATEMENT OF FACTS

### A. Procedural History.

On June 18, 2019, Plaintiffs served a Standard Tort Claim form to the District. (Complaint, pp. 2-3). On June 21, 2019, Plaintiffs, Paula Steven, individually and as parent and guardian of her minor son, D.' M., filed and served a Complaint alleging negligence, violation of the Washington Law Against Discrimination, violation of RCW 28A.642.010, and injury of a child under RCW 4.24.010. (*Id.* at p. 10).

As of September 11, 2020, the Court-appointed GAL and Court-approved SGAL Landon Gibson has recommended settlement for the benefit of D.' M. (Report and Order Approving Minor Settlement).

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[1] In the event the minor settlement is not approved, the legal authorities and argument herein apply equally to the minor's claims and they should also be dismissed.

### B. The Complaint Asserts Claims of Discrimination and Negligence.

The Complaint asserts allegations that Ms. Steven's minor son, D.' M., "was the victim of selective grading practices and attendance recording practices by the instructor and office staff' at Lakeland Elementary School. (*Id.* at p. 2). Specifically, she claims:

- Soon after D.' began his third and fourth grade school year, the office staff changed his attendance records from on time to half day absences.
- D.' reported to his mother Paula Steven, that his teacher treated him differently because he is black.
- D.' told his mom that he raised his hand in class at the end of the school to ask his teacher could she stop just calling on students who were "non-black" to answer questions, D.' stated "my teacher only points at me during class to show the class how to be quiet and properly sit criss-cross applesauce, but when she is picking a student to answer a reading or math problem she does not ever pick me or any other blacks to answer any problems, she only picks on non-blacks."
- D.' notified his mother he was being read to at first grade reading level when he read to his teacher and his teachers had him read to her. D.' was send to first and second grade classes during the school days. D.' was

tormented, harassed, and teased by his peers due to race. He was teased by classmates because his teacher read to him and she made him read to her at first grade level. The teacher read to the other students at third and above grade levels.

- D.' was physically aggressively grabbed and pulled back by his teacher by his athletic jersey shirt collar.
- D.' was sent to first grade classrooms and not allowed to participate in class Thanksgiving, Christmas, and other parties and celebrations in his class.

(Compl., pp. 2-6).

Ms. Steven alleges that the District engaged in "outstandingly bad, shocking and awful misconduct," because it had notice of the harassment and discrimination and failed to take steps to investigate and remedy the situation. (*Id.* at p. 9).

### C. Ms. Steven Has Not Produced Any Supporting Evidence.

Discovery cutoff is September 8, 2020. Both the deposition of Ms. Steven and her son have been taken and neither produced any testimony supporting the claims at issue or any resulting injuries. Ms. Steven alleges D.' became depressed and despondent. (Compl., p. 9). However, there is no evidence of depression or despondency, let alone causation. Plaintiffs never sought medical or mental health treatment for these

concerns and there are no records supporting such claims.

## III. STATEMENT OF THE ISSUES

1. Whether the Court should dismiss Ms. Steven's claim for negligence where there is no recognized cause of action for negligent investigation?

2. Whether the Court should dismiss Ms. Steven's claim under the Washington Law Against Discrimination where she has failed to make a prima facie showing of the essential elements of the claim?

3. Whether the Court should dismiss Ms. Steven's claim under RCW 4.24.010 for injury to a child where she has failed to make a prima facie showing of the essential elements of the claim?

## IV. EVIDENCE RELIED UPON

The pleadings and evidence previously filed on record herein.

## V. ARGUMENT AND AUTHORITY

Civil Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

> In such a situation, there can be no genuine issue as to any material fact, since a complete

> failure of proof concerning an essential element of the nonmoving party's cage necessarily renders all other facts immaterial. The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

*Id.* at 322-3 (internal quotations omitted); *Scrivener v. Clark Coll.,* 181 Wn.2d 439, 444, 334 P.3d 541 (2014).

The moving party carries its initial burden of showing no genuine issue of material fact by arguing that the nonmoving party has a failure of proof concerning a necessary element of the nonmoving party's claim. *See Keck v. Collins,* 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). There can be no genuine issue of material fact for trial when there is a complete failure of proof concerning an essential element of a cause of action. *Guile v. Ballard Community Hosp.,* 70 Wn. App. 18, 23-24, 851 P.2d 689 (1993) ("Because they moved for summary judgment based on (Plaintiff's) lack of evidence, they were not required to support their summary judgment motions with affidavits.") (citing *Young v. Key Pharmaceuticals, Inc.,* 112 Wn.2d 216, 226, 770 P.2d 182 (1989); *Keck v. Collins,* 184 Wn.2d 358, 370, 357 P.3d 1080 (2015)).

The nonmoving party must set forth evidentiary facts and cannot meet its burden by relying on "speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entertainment Co.,* 106 Wn.2d 1, 13, 721

P.2d 1 (1986). Statements of ultimate facts, conclusions of fact, or conclusory statements of fact on the part of the nonmoving party are insufficient to overcome a motion for summary judgment. *See* CR 56(e); *Doty-Fielding v. Town of South Prairie,* 143 Wn. App. 559, 566, 178 P.3d 1054 (2008); *See Kirk v. Moe,* 114 Wn.2d 550, 557, 789 P.2d 84 (1990).

Summary judgment is appropriate here on all of Ms. Steven's claims because (1) she has provided no evidence to establish essential elements of her claims, and (2) there is no cognizable cause of action for negligent investigation.

### A. Plaintiffs' Claim for Negligent Investigation Fails as a Matter of Law as Washington Does not Recognize Such a Cause of Action.

No Washington court has ever recognized a separate and distinct cause of action for negligent investigation. *Dever v. Fowler,* 63 Wn. App. 35, 44, 816 P.2d 1237 (1991), *as amended on denial of reconsideration* (Dec. 20, 1991), *amended,* 824 P.2d 1237 (1992). "A claim for negligent investigation is not cognizable under Washington law." *Fondren v. Klickitat County,* 79 Wn. App. 850, 862, 905 P.2d 928 (1995). This rule recognizes the chilling effect such claims would have on investigations. *Dever v. Fowler,* 63 Wn. App. 35, 45, 816 P.2d 1237 (1991), *review denied,* 118 Wn.2d 1028, 828 P.2d 563 (1992). An exception only exists concerning Department of Social and Health Services (DSHS) investigations for sexual abuse cases. *Babcock v. State,* 116 Wn.2d 596, 809 P.2d 143 (1991); *Lesley v. Department of Social & Health Servs.,* 83 Wn. App.

263, 921 P.2d 1066 (1996), *review denied,* 131 Wn.2d 1026, 939 P.2d 216 (1997). No court has extended the DSHS caseworker exception. *Corbally v. Kennewick Sch. Dist.,* 94 Wn. App. 736, 740, 973 P.2d 1074 (1999).

Ms. Steven asserts a claim of negligent investigation with lengthy allegations that the District performed an invalid or inadequate investigation. (Compl., pp. 5-6). She claims that "the District is also required to conduct a thorough investigation of grievance complaints." (*Id.* at p. 10). As negligent investigation is not a recognized cause of action in Washington, Ms. Steven's negligence claim must be dismissed.

**B. Ms. Steven Has Failed to Make a Prima Facie Showing of the Essential Elements of a Claim Under the WLAD.**

Under the Washington Law Against Discrimination (WLAD), "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." RCW 49.60.400. To demonstrate a prima facie case of discrimination the plaintiff must prove: (1) the plaintiff is a member of a protected class, (2) the defendant's establishment is a place of public accommodation, (3) the defendant discriminated against the plaintiff when it did not treat the plaintiff in a manner comparable to the treatment it provides to persons outside that class, and (4) the plaintiff's protected status was a substantial factor that caused the discrimination. Where a plaintiff fails to establish a

prima facie showing of even a single element of her cause of action, the defendant is entitled to judgment as a matter of law. *Kirby v. City of Tacoma,* 124 Wn. App. 454, 464, 98 P.3d 827 (2004).

Ms. Steven unequivocally fails to make prima facie showing of the third and fourth elements of her discrimination claim; specifically: (3) that the District treated D.' differently than similarly situated students, and (4) that D.'s race was a substantial factor in his being marked tardy or absent at school, reading assignments, and treatment by other students.

**1. As to Element 3, There is No Showing there was a Failure to Treat D. in a Manner Comparable to Treatment of Peers.**

Ms. Steven claims that the District unfairly marked D.' tardy when he was late for school, read to him at a reading level below his grade, that he was excluded from class activities, and that his teacher and/or peers harassed him based on his race. (Compl., p. 4). Ms. Steven, however, "must do more than express an opinion or make conclusory statements" and must establish "specific and material facts to support each element of his or her prima facie case." *Fulton v. Dep't of Soc. & Health Servs.,* 169 Wn. App. 137, 147, 279 P.3d 500 (2012) (quoting *Hiatt v. Walker Chevrolet Co.,* 120 Wn.2d 57, 66, 837 P.2d 618 (1992)).

Ms. Steven has not presented any evidence that D.' was treated differently than any other similarly situated student. Each and every assertion that D.' was somehow singled out, excluded, not allowed to

participate, or otherwise treated differently is solely based on self-serving allegations and conclusions. They are wholly unsupported by evidence of any kind, either witness testimony, records, or otherwise.

### 2. As to Element 4, There is no Showing That D.'s Race Was a Substantial Factor.

Similarly, Ms. Steven has failed to show that D.'s protected status was a substantial factor that caused the alleged discrimination. A "substantial factor" means that the protected characteristic was a significant motivating factor bringing about the complained of conduct. *Scrivener v. Clark Coll.,* 181 Wn.2d 439, 444, 334 P.3d 541 (2014) (citing 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 330.01.01, (6th ed. 2012).

Ms. Steven's claim that D.'s race was a factor in any of the alleged conduct is based wholly on her own personal opinion and self-serving conclusions. Ms. Steven has presented no actual supporting evidence indicating how D.'s race was a factor in any alleged decision or action. She cannot meet the burden of proving this essential element to her WLAD claim. Thus, the claim must be dismissed.

## C. Ms. Steven is Not Entitled to Recover Under RCW 4.24.010.

RCW 4.24.010 provides that a parent may bring an action for the injury or death of a child. To maintain such an action, there must be evidence of an injury to the child with resulting damages. *Benoy v. Simons,* 66 Wn. App. 56, 64, 831 P.2d 167, *rev. denied,* 120 Wn.2d 1014, 844 P.2d 435 (1992) (emphasis added). The

statute presupposes the injury leads to medical treatment and "health care expenses." It provides "[i]n addition to recovering damages for the child's health care expenses" damages may be also recovered parental consortium. RCW 4.24.010(2); *Chapple v. Ganger,* 851 F. Supp. 1481, 1492 (E.D. Wash. 1994).

**1. Ms. Steven Has Presented No Evidence of Injury or Damage.**

Ms. Steven has not presented even a modicum of evidence showing an injury to D.' with resulting damages as required to maintain an action under this statute. There are no medical records or treatment providers establishing any injury to D.'. Here there is no evidence of economic damages such as medical treatment or expense.

Ms. Steven has failed to make a prima facie showing of injury or resulting damages let alone causation. She alleges in her Complaint that D.' became depressed and despondent, however, Ms. Steven has never produced any supporting evidence of these alleged conditions. (Compl., p. 9). She has not provided any medical records or treater testimony indicating that D.' was depressed, diagnosed with, or treated for any such emotional distress. Moreover, she has not produced any evidence indicating how the District's actions proximately caused any alleged injury. Here, any claimed damages, as well as any causal connection between that claimed injury and some District action or inaction, is entirely speculative and cannot form the basis of recovery under this statute.

## VI. CONCLUSION

For the foregoing reasons, the Court should dismiss all of Ms. Steven's claims in their entirety with prejudice.

DATED this 8th day of September, 2020.

*I certify that this memorandum contains 2.392 words, in compliance with the Local Civil Rules.*

PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

By: /s/ Patricia K. Buchanan
Patricia K. Buchanan, WSBA 19892
Of Attorneys for Defendant

## APPENDIX J

**SUPERIOR COURT OF THE STATE OF WASHINGTON**

**FOR KING COUNTY**

**No. 19-2-16487-5 KNT**

**82042-7-I**

**[Filed: January 29, 2021]**

PAULA STEVEN, individually and as a parent and guardian of D. M., a minor,

Plaintiffs,

vs.

FEDERAL WAY SCHOOL DISTRICT,

Defendant.

VERBATIM TRANSCRIPT OF PROCEEDINGS
OF
A DEFENSE MOTION FOR SUMMARY JUDGMENT HEARING
BEFORE THE HONORABLE NICOLE GAINES PHELPS

10/9/2020

APPEARANCES

For Plaintiff: Appears Pro Se
For Defendant: Patricia A. Buchanan
Also Present: N/A

Transcribed at the Request of Paula Steven

Transcribed by Brian Killgore

***ACE Transcripts, Inc. -- (206) 966-5050***

[*Table of Contents Omitted for Printing Purposes*]

* * *

[p. 13]

judgment, which is the rule CR 56, and the defendant's summary judgment should be denied because there are genuine issues of material facts that exist in my case that the trial -- to call the trial on the merits.

I believe my briefing in itself, and it has been -- the perspective of it, it speaks for itself, and so just to touch a little bit on what Ms. Buchanan was stating is that first for me she filed the motion for summary judgment; however, in my opinion -- she did it a lot on D.'s claim, knowing that his claim had been resolved, but to kind of speak on me -- and let me touch on the -- now I don't know if I am going to say this right, but the praecipe, the one that she filed on the sixth, which isn't timely because in her motion for summary judgment she is stating Celotex, which Celotex is saying that if the -- if the party does not have -- I forget -- if the party does not show evidence, that they are not required to support their motion with affidavits, declarations and

things of that nature, and so for her to now come back and after -- because CR 56 is very -- it set out very well on how things are -- how and when things are supposed to be filed, and I feel that was untimely, but if you want to get into that what I would say about --

THE COURT: So what -- okay.

So I am just going to interrupt and I am going to add

* * *

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know that in itself leaves a plethora of disputable facts that -- and gives reason to why this should go to trial.

I believe that I have showed a prima facie; I also believe that -- and let's talk -- I want to switch here a little bit. I would like to talk about their opposition -- excuse me, their motion, because I just believe that, you know, they submitted it on mere hearsay.

They show no facts that I didn't show a prima facie for all four elements, and you know it is disputable that I should have, because they denied this, but here is the disputable fact -- also that I should get treated in the same unfair prejudice manner, unfair manner, and that -- and that I have established my claims, and that I just really don't believe that, and I believe my evidence will show at trial that I wasn't -- they didn't show the ordinary care that should have been exercised, and so I just think with that, and my -- in the brief before the court that that should warrant a trial.

And so I will leave it at that. Thank you.

THE COURT: Thank you, Ms. Steven.

Ms. Buchanan, anything else?

MS. BUCHANAN: I did want to just make a few brief comments, your honor; one, the motion for summary judgment that we filed did in fact have interplay with D.'s claim. It was filed before the approval of the settlement, so we were straddling that time period, and then I would just like to cite for the record, and then your honor is likely aware, but for the record under McCormick v. Lake Washington School District, sworn testimony cannot be contradicted in order to be an issue of fact, and I think McCormick is 107 Wn.App -- I believe -- but if the court needs a cite to that, I can get it for you.

MS. STEVEN: Your honor, I would like to say that if you are going to allege -- because that is very serious. That's lying under oath.

I admitted that what I said -- however, just because I said it doesn't mean it didn't happen. See, if you look at your question, the way you formed your question, you -- there is nothing contradictory to my deposition, and that is a very serious allegation, because that would be I lied under oath, and I did not do that.

THE COURT: She is not saying that. Let me clear up what she is saying.

There is a difference between -- and this is what makes law very interesting at times, difficult at times and hard to dissect at times.

It doesn't -- just because something doesn't meet a legal standard, or someone is arguing that it doesn't meet a legal standard does not in any way mean that they are arguing that it didn't happen. And I want to be very clear.

* * *

[p. 32]

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Dated January 28, 2021.

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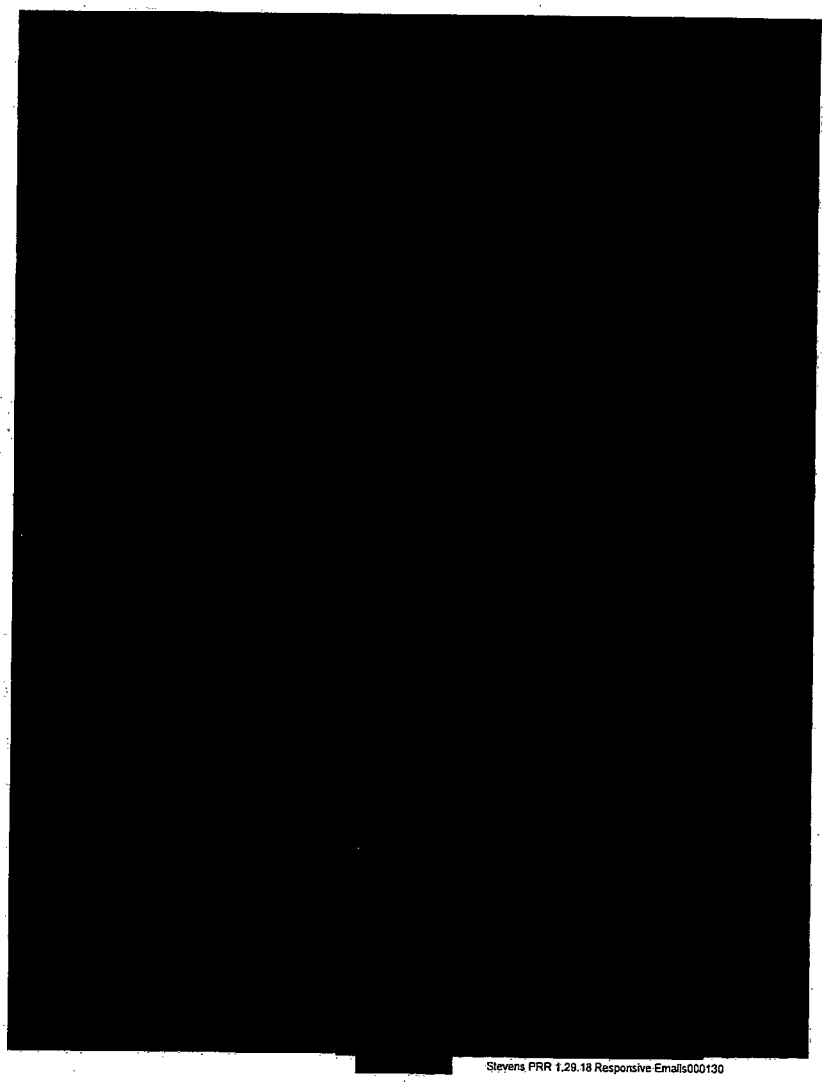
## APPENDIX K



## APPENDIX L

**Steven v. Federal Way School District**

**19-2-16487-5 KNT**

**[Dated: October 9, 2020]**

**TRANSCRIPT EXCERPT**

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[p. 18]

in their motion for summary judgment I believe is hearsay. They provided no affidavit, they provided no evidence, nor did they file any evidence that shows that my evidence -- you know, does not contain facts, and so I believe that I have provided, which CR 56 states that it is my burden to do so, I provided evidentiary fact, facts that show a genuine issue of material fact that exist.

I have been able to demonstrate that the standard of care that I was due as a parent was not given, was not provided to me, and that -- one moment here, I have just got so much going on.

Another thing I wanted to touch on is that the prima facie that Ms. Buchanan -- she said that I did not -- well actually she admitted that out of the 1 through 4 that I met -- that I actually did meet two; however, in her 3 and 4 -- in the third and fourth one she relies on D.'s claim to show that I did not meet that

burden, and that's not -- to me she has failed, even with that for her motion because why would you not list -- that should be talking about prima facie for me, not prima facie for D., and so -- can I just -- can you give me just one second? I am trying to find my notes I made.

(Brief Pause in Proceedings)

MS. STEVEN: Can you just give me a minute, your honor?

THE COURT: Not a problem. You've got time.

MS. STEVEN: Thank you.

(Brief Pause in Proceedings)

MS. STEVEN: Okay. Yes, so I just believe that, as I stated in my opposition, which fell apart -- I had it in front of me -- my apologies -- but as I mentioned in my motion for summary judgment that you know discrimination lawsuits, they really should be decided by the jury, or the trier of fact, and I listed those emphases as to why, you know, that should happen, and -- sorry --

THE COURT: That's okay. We have time. Ms. Steven, we have time, so if you need a minute to gather your notes and get your thoughts together, it's okay. You can take a couple of minutes to do that.

MS. STEVEN: I appreciate that. Thank you.

Can I just grab a clip? My clip came apart. Well, I will try to work without it, but --

THE COURT: We have got time, so.

MS. STEVEN: Thank you.

(Brief Pause in Proceedings)

MS. STEVEN: Just give me one minute.

THE COURT: Okay.

(Brief Pause in Proceedings)

MS. STEVEN: So even in the testimony today, you know, they focused on the -- on the damages portion, and you

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## APPENDIX M

## CONSTITUTIONAL PROVISIONS INVOLVED

### Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

### Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the

enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.