



SCOTUS
Grants Petition In
Gloucester County
School Board v. G.G.

The Supreme Court of the United States (SCOTUS) recently granted certiorari in *Gloucester County School Board v. G.G.*, the widely followed dispute regarding bathroom use.

Although the school board’s policy of requiring students to use facilities that match the gender they were assigned at birth has made headlines, SCOTUS limited its review to two technical questions in the petition: how much weight should be given to agency opinion letters, like the one issued by the DOE’s Office of Civil Rights in January 2015; and whether DOE’s interpretation of Title IX and a 1975 regulation as requiring schools to treat their transgender students consistent with their gender identity should be given effect. The case is expected to be heard in February.

SJC Rejects Existence Of Union Member-Union Privilege

In *Chadwick v. Duxbury Public Schools*, 475 Mass. 645 (2016), the Massachusetts Supreme Judicial Court (“SJC”) declined to recognize the existence of a “union member-union” privilege within M.G.L. c. 150E (collective bargaining statute), and declined to create such privilege under common law. While conceding that a union member-union privilege has never been recognized in Massachusetts, the plaintiff, Nancy Chadwick, argued that c. 150E should be interpreted to recognize such a privilege and that the privilege barred access to certain discovery requests made by Duxbury. Chadwick sought a privilege “that would protect from disclosure to employers communications between public sector employees and their unions when made (1) in confidence; (2) in connection with bargaining or representative services relating to anticipated or ongoing disciplinary or grievance proceedings; (3) between an employee (or the employee’s attorney) and union representatives; or (4) by union representatives acting in official representative capacities.” The decision affirms an earlier ruling by the superior court rejecting the plaintiff’s claim and ordering production of the requested discovery.

At issue were communications between Chadwick and union representatives, or among union reps acting in their official capacities. Duxbury requested these communications in defense of the civil lawsuit filed against them by Chadwick, alleging discrimination and retaliation. Chadwick objected to Duxbury’s requests and withheld dozens of emails from disclosure on the basis of union member-union privilege. Duxbury filed a motion to compel production, since no such privilege exists in Massachusetts.

The Court’s decision distinguishes between proceedings arising out of the collective bargaining context, and civil lawsuits brought by individual employees. “[T]he plain and unambiguous language of [150E] §10(a)(1) does not require that communications between union members and union representatives be protected from interference by an employer defending itself from an employee’s civil action.” The Court stated that except in rare cases, whether to create such a privilege is better left to the Legislature. It further opined that *Chadwick* was not an appropriate case on which to judicially create such privilege given that any harm to Chadwick as a result of not creating the desired privilege was speculative.

Time To Get Records Officers In Shape For New Records Law

The revamped Public Records Law takes effect on January 1, and employers should ensure that trained Records Access Officers (“RAOs”) are in place. RAOs play a critical role in assuring compliance with the stringent requirements of the revised law, which now carries the potential of attorney’s fees awards for non-compliance.

The new regulations automatically identify as RAOs the “municipal clerk” or the clerk’s designees and other employees previously authorized to make public records or information available to the public. A municipality’s chief executive officer can also appoint other RAOs. RAOs are expected to respond to a records request within **10 business days**, including permitting public records within the RAO’s custody to be inspected or copied during regular business hours, without unreasonable delay. The regulations expect that an RAO’s “superior knowledge of the contents of a governmental entity’s files shall be used to assist in promptly complying with the request.” Failure to comply with the 10 business day response requirement will waive the municipality’s right to charge a fee for the records.

Other duties of an RAO include coordinating a response to requests for public records, assisting those seeking public records in identifying the records requested, and assisting the custodian in preserving and managing public records. An RAO must prepare guidelines to be posted on the municipality’s website that enable requesters to make informed requests regarding the availability of records electronically or otherwise. The guidelines should include a list of categories of public records maintained by the agency/municipality that is updated periodically. The RAO is also required to post commonly available public records on a website maintained by the municipality for a period determined by the municipality.

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