WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

October 2022

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

Ninth Circuit Court of Appeals

Employment Discrimination

MacIntyre v. Carroll College
No. 21-35642 (9/8/22)

The Ninth Circuit Court of Appeals held that an employer's refusal to renew an employee's contract may constitute an adverse employment action for purposes of bringing a Title IX retaliation claim. Bennett MacIntyre was the Associate Athletics Director and head golf coach for Carroll College. In September 2015, MacIntyre noted on his self-evaluation that he had a goal to make the college compliant with Title IX of the Education Amendments Act of 1972, which generally prohibits sex-based discrimination in schools that receive federal funding. Later, in January 2016, MacIntyre reported multiple alleged Title IX violations to the college's Title IX Coordinator, including workplace harassment, hostile work environment, and discrimination involving several administrators at the college, including Kyle Baker, the Interim Director of Athletics. The next month, Baker submitted a performance review of MacIntyre, giving him the lowest possible score in every category. MacIntyre subsequently filed a grievance, alleging that his poor performance evaluation constituted discrimination and created a hostile work environment. Carroll College and MacIntyre settled the grievance, but in the meantime, the college's new Athletic Director learned of MacIntyre's Title IX complaints and decided to not renew MacIntyre's contract after it expired in June 2018. The college claimed that the nonrenewal was due to budget cuts, but MacIntyre filed a lawsuit, claiming that the college's failure to renew his contract constituted retaliation in violation of Title IX. The district court dismissed MacIntyre's lawsuit, holding that nonrenewal of MacIntyre's contract could not constitute an adverse employment action because he had no entitlement to renewal of the contract, and an adverse employment action is an element necessary to establish retaliation under Title IX. The Ninth Circuit reversed, reasoning that an "adverse employment action" is defined broadly to include any action that may dissuade a reasonable person from making a claim of discrimination. Because the nonrenewal of an employee's contract may dissuade the employee from reporting discrimination under Title IX, the Court held that such action could constitute an adverse employment action, and it reversed the dismissal of MacIntyre's claim.

Washington Court of Appeals

Public Records Act

Williams v. Department of Corrections
No. 55453-4-II (8/30/22) (unpublished)

The Washington Court of Appeals held that the Washington State Department of Corrections (DOC) violated the Public Records Act (PRA) when it failed to provide in its five-day letter an estimate of the time it would need to respond to an inmate's records request. In 2019, Carri Williams, an inmate housed at a DOC facility, filed three separate PRA requests with the DOC, seeking various witness statements and documents that would be used at a disciplinary hearing. Williams specifically requested "a very fast response" given the "discrete" nature of her request. The DOC responded to the requests within five business days, and in its response to two of the requests, the DOC informed Williams of the date by which she should expect an update. However, in responding to one of the requests, the public records specialist failed to identify a date by which Williams could expect an update, instead writing that an update would be provided "within business days, on or before 2019." Williams ultimately received the records in installments over the course of several months, with one of her requests taking 434 days to fulfill. Williams filed a complaint in superior court, alleging that the DOC violated the PRA by failing to provide an estimated production date in one of its five-day letters, and also by failing to provide the requested records within a reasonable time. The superior court dismissed Williams' claims, agreeing with the DOC that its failure to identify an estimated response time was not in violation of the PRA and that the DOC had not unreasonably delayed production. The Court of Appeals reversed in part, holding that the DOC was required to provide an estimated response date to the request in its five-day letter. The Court acknowledged that the failure of the letter at issue to include a date appeared to be inadvertent, but the Court nonetheless concluded that the response violated the PRA. However, the Court agreed that the amount of time the DOC required to produce the records was reasonable given the numerous requests the agency was handling at the time, as well as the time it required to clarify the intent of the request, locate and assemble the information, notify third persons or agencies affected, and to determine if any of the information was exempt from disclosure.

Religious Discrimination

Suarez v. State of Washington
No. 38381-4-III (9/20/22)

The Washington State Court of Appeals held that an employer's obligation to reasonably accommodate an employee's religious beliefs under the Washington Law Against Discrimination (WLAD) requires the employer to take affirmative steps to resolve a scheduling conflict if it can be done without undue hardship. Adelina Suarez is a Christian who observes Saturdays as the Sabbath and celebrates seven religious holidays throughout the year. According to her religious beliefs, she is not permitted to work on the Sabbath or certain holidays. In 2018, Suarez applied for a nursing assistant position with the Yakima Valley School, a residential nursing facility that serves vulnerable, disabled adults. During the hiring process, Suarez informed the school that her religious beliefs precluded her from working Saturdays and holidays. The school informed Suarez that there were no available positions with Saturdays off, but that she could request a schedule change after working for some time. Suarez accepted a position with a weekly work schedule of Wednesday through Sunday, with Mondays and Tuesdays off. Employees of the school are unionized, and the terms and conditions of their employment are governed by a collective bargaining agreement (CBA). The CBA provides each employee with two

unpaid holidays for reason of faith or conscience, and allows the school to require staff to work mandatory overtime. After she began working for the school, Suarez requested a schedule change multiple times, and each request was denied. On September 8, 2019, Suarez requested paid time off to attend religious festivals on September 28 and September 29. The school denied this request because a different nursing assistant was already scheduled to take leave on those days. Suarez then requested unpaid leave on those days, which was also denied due to staffing shortages and the short notice of the request. Although she reported for work on September 28, on September 29, a few hours before her scheduled work shift, Suarez called the school and said she would not be coming in due to a church function. After she failed to arrive for her September 29 shift, the school gave notice that her probationary employment would be ending in October due to her history of refusing overtime and her failure to work on September 29. Suarez filed a lawsuit against the school, alleging violations of the WLAD for failure to accommodate her religious beliefs. The superior court dismissed Suarez's claim. The Court of Appeals reversed, adopting the federal definition of "reasonable accommodation" as one that resolves the conflict between the employee's work duties and religious beliefs and does not impact their benefits or job status. The court further adopted the definition of "undue hardship" from WAC 82-56-020, which grants State employees the right to two unpaid holidays per year for reasons of faith. Under this definition, "undue hardship" means an action requiring "significant" difficulty or expense to the employer. The court held that there was no evidence demonstrating that accommodating Suarez's request for unpaid leave on September 29 caused the school significant difficulty or expense, and therefore, there remained a question of whether accommodating Suarez's request caused the school an undue hardship. Finally, with regard to Suarez's requested schedule change, the court adopted federal precedent and held that an employer's obligation to provide reasonable accommodations for an employee's religious beliefs requires the employer to take active or affirmative steps to resolve a scheduling conflict if it can be done without undue hardship. Because there was no evidence that the school attempted to eliminate the conflict between Suarez's religious beliefs and her Saturday schedule, such as by asking for volunteers to switch shifts, the court reversed dismissal of her failure to accommodate claims. One judge dissented from this opinion and would have affirmed dismissal of Suarez's lawsuit, writing that the WLAD did not require "hand-holding," and that providing Suarez leave in excess of that permitted by the CBA was an undue burden because it would have given her a benefit over more senior employees.

PERC

Representation

Edmonds School District
Decision 13555 (PECB) (8/29/20)

A PERC Examiner dismissed as untimely a representation petition filed by the Public School Employees of Washington (PSE) to include 29 Student Intervention Coordinator (SINC) employees of the Edmonds School District into its existing classified support staff bargaining unit. In 1975, PERC recognized the Professional Technical Employees Organization (Prof-Tech) as the exclusive bargaining representative of 40 professional technical employee positions within the District. Prof-Tech has three officer positions, and it maintains bylaws, which state that its purpose is to "advocate for and support Professional Technical Employees" in the District, including by negotiating a memorandum of understanding (MOU) with the District. In 2019, the District created the SINC position, which provides support to students who may have

behavior problems, attendance, or academic support needs. Consistent with its longstanding practice, after creating the position, the District reviewed the SINC job description and determined that it should be placed in the Prof-Tech bargaining unit because it was similar to positions already in the Prof-Tech bargaining unit. The District did not notify PSE of the position because it did not believe the SINCs had a community of interest with PSE's bargaining unit. SINC employees knew they were represented by Prof-Tech, as the president regularly communicated with the SINCs through email, answered questions about their wages and working conditions, bargained MOUs with the District on the SINCs' behalf, and also represented SINCs in investigatory and discipline matters. In May 2021, PSE filed a representation petition to include 29 SINCs into its existing classified support staff bargaining unit, arguing that Prof-Tech is solely a "meet and confer" union, not an organized labor organization under chapter 41.56 RCW, the statutory scheme that governs collective bargaining between public employers and their employees in the State of Washington. The Examiner rejected PSE's challenge to the validity of Prof-Tech as an organized labor organization, reasoning that the statute broadly defines a bargaining representative as any lawful organization which has a primary purpose of representing employees in their employment relationship with employers. The Examiner held that Prof-Tech constituted a valid labor organization because it conducted membership meetings, negotiated MOUs with the District, voted on tentative agreements reached by representatives with the District, and represented SINCs in disciplinary meetings. Because Prof-Tech was a valid labor organization that already represented the SINCs, under the contract bar rule, PSE was required to file a representation petition within the "window period" of not more than 90 days nor less than 60 days prior to the expiration of the date of the Prof-Tech effective bargaining agreement. PSE's representation petition was filed outside of that window, and as a result, the Examiner dismissed the petition as untimely.

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