

# WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK  
LLP

December 2023

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

## Washington Court of Appeals

### Public Records Act

*San Juan County v. Washington Coalition for Open Government*

No. 84941-7-I (11/13/23) (unpublished)

The Washington Court of Appeals held that San Juan County did not violate the Public Records Act (PRA) when it disclosed heavily redacted attorney invoices concerning payments made to outside legal counsel in response to a public records request. Edward Kilduff filed a PRA lawsuit against San Juan County in 2015. Kilduff was represented by a board member of the Washington Coalition for Open Government (WCOG) and San Juan County hired outside legal counsel. While the litigation was still pending, WCOG made a public records request for all invoices, correspondence, notes, proposals, and meeting minutes related to the County's use of outside legal counsel in Kilduff's PRA case. The County provided the responsive attorney invoices, which included the hours and total dollar amounts billed, but the descriptions in the invoices of work performed were fully redacted. WCOG filed a lawsuit against the County, alleging that it had violated the PRA by excessively

redacting the invoices. WCOG relied in part on less-heavily redacted attorney invoices it had obtained from other government agencies in separate PRA requests. The trial court conducted an in-camera review of the redacted records and concluded that the descriptions contained attorney mental impressions, theories, or opinions in furtherance of the County's position in the Kilduff litigation, and were exempt from disclosure as "work product protected by privilege." As a result, the trial court ruled that San Juan County did not violate the PRA and dismissed WCOG's lawsuit. WCOG appealed, arguing that the County's redactions violated RCW 42.56.904, which prohibits government agencies from withholding attorney invoices in their entirety in response to a PRA request. The Court of Appeals rejected WCOG's argument, holding that the invoice descriptions detailed actions counsel took in furtherance of ongoing PRA litigation, which evidenced the County's litigation strategy and was therefore protected from disclosure under work product and attorney-client privilege. The Court further rejected WCOG's argument based on RCW 42.56.904, noting that the County did not withhold the invoices in their entirety because neither the hours nor amounts billed were redacted from the invoices. As a result, the Court affirmed dismissal of WCOG's lawsuit.

## Recreational Use Immunity

*Williams v. Centralia School District 401*  
No. 57145-5-II (11/28/23) (unpublished)

The Washington Court of Appeals affirmed dismissal of a negligence lawsuit filed against the Centralia School District, holding that the District was immune from suit under Washington's recreational use immunity statute, RCW 4.24.210. The District partially owns land containing a public park that includes several softball fields. The park is open to the public and does not charge an entry fee or parking fee, but sometimes tournaments held at the park charge an entrance fee. In May 2016, Corrine Williams visited the park, intending to watch a softball tournament. Williams did not pay a fee to enter the park and joined a group of people tailgating in the parking lot before the game. Williams saw some friends across the parking lot and decided to walk over toward them. In doing so, Williams stepped off the sidewalk onto the grass, lost her balance due to the height drop-off, and broke her ankle. Williams sued the District for negligence, alleging that her fall was caused by the concealed height difference between the walkway and grass culvert. The trial court dismissed the case, ruling that recreational use immunity protected the District from suit as a matter of law. The Court of Appeals affirmed. Under the recreational use immunity statute, RCW 4.24.210, landowners are entitled to immunity from premises liability when the land in question: (1) is open to the public (2) for recreational purposes and (3) for which no fee of any kind is charged. The Court held that all three elements were met here because Williams failed to raise a genuine dispute of fact about whether she was charged a fee to enter the park on the day she fell. Williams also failed to present any evidence that there was a fee that day for entry to the softball tournament, and even if there was, the Court held that the location where Williams fell was not necessary to traverse in order to reach the softball tournament, as she fell while

attending a social event separate from the tournament itself. As a result, the Court held that the District was immune from liability under the recreational use immunity statute, and it affirmed dismissal of the case.

## PERC

### Discrimination

*City of Seattle*  
Decision 13735 (11/13/23)

A PERC Examiner ruled that placing an employee on paid administrative reassignment in order to investigate possible policy violations did not constitute a deprivation of right, benefit, or status, as necessary to establish a prima facie case of discrimination under state collective bargaining laws. Kirk Calkins worked as a Street Use Inspector for the City of Seattle. The City's Street Use Inspectors are represented by PROTEC17 (Union) for collective bargaining purposes. The City historically used a rotational overtime system for street inspection work that occurred off-hours. However, in early 2022, the Union and City agreed to change the overtime rotation system which resulted in a reduction of overtime shifts available to Calkins. Unhappy with the changes, Calkins filed an unfair labor practice (ULP) complaint with PERC in June 2022, arguing that the City had unilaterally changed the overtime policies. PERC dismissed Calkins' complaint, ruling that such a claim could only be brought by the Union itself, not an individual member like Calkins. In September 2022, the City received a complaint about Calkins from a contractor, alleging that Calkins had been unprofessional in interactions with them, including calling them a "rich kid" who could afford to pay certain fines. The City's personnel rules provided it could temporarily place an employee on administrative reassignment pending investigation into alleged misconduct, and the City routinely placed employees on administrative reassignment



while it investigated. When an employee is placed on administrative reassignment, their rate of pay and hours of work remain the same. After being placed on administrative reassignment, Calkins filed a ULP with PERC, alleging that his reassignment was in retaliation for the first ULP complaint he filed regarding the overtime changes. Following a hearing, the Examiner dismissed Calkins' complaint, ruling that Calkins failed to establish he was denied some ascertainable right, benefit or status, an element necessary to prove a discrimination ULP. The Examiner reasoned that administrative reassignment was not a deprivation of right, benefit or status because Calkins received no reduction in pay, leave, or benefits during that time. The Examiner further ruled that even if Calkins could establish a prima facie case of discrimination based on his administrative reassignment, his complaint would still be dismissed because the City produced evidence of a legitimate, nondiscriminatory reason for the action—investigating a complaint that Calkins had been unprofessional with the public in violation of expectations as a City employee. Because there was no evidence that the City deprived Calkins of an ascertainable right or benefit in connection with union activity and the City had a legitimate, nondiscriminatory reason to place Calkins on administrative reassignment, the Examiner dismissed Calkins' complaint.

### **Unit Clarification**

*Sound South 911*

Decision 13736 (11/14/23)

The Public Employment Relations Commission (PERC) dismissed a unit clarification petition filed by Teamsters Local 117 (Teamsters), which sought to add approximately 17 fire dispatch employees into its existing bargaining unit of law enforcement dispatchers. South Sound 911 is an independent agency created in 2011 that provides 911 emergency communications and law enforcement records services in Pierce County. The Guild of Pierce

County Fire Communications (Guild) represents a bargaining unit of full-time and part-time fire dispatch employees and fire communication supervisors at South Sound 911. Teamsters represents a bargaining unit that includes employees performing law enforcement dispatch services for South Sound 911. Teamsters previously represented a small portion of fire dispatch employees until 2015, when it agreed to a memorandum of understanding (MOU) contracting that work out to West Pierce Fire and Rescue, a separate agency whose fire dispatch employees were represented by the Guild. In 2017, West Pierce Fire and Rescue dispatch operations were consolidated into South Sound 911, and those fire dispatch employees continued to be represented by the Guild. Meanwhile, Teamsters continued to represent the law enforcement dispatch employees following the consolidations. In July 2021, South Sound 911 opened a new facility and moved all dispatch services (fire and law enforcement dispatch) into the same location. Teamsters then filed a unit clarification petition seeking to return those fire dispatch employees that they had lost through the MOU contracting the work out to West Pierce Fire and Rescue before the 2017 consolidation with South Sound 911. Teamsters argued in part that the positions should be added to its bargaining unit because the change in location and implementation of a universal call taking system constituted a change in circumstance that altered the community of interest, as necessary to support a unit clarification petition. PERC rejected Teamsters' argument, reasoning that a change in circumstance that alters the existing community of interest must include a significant change to the workplace environment, such as the job duties or reorganization of the workforce. PERC held that neither the changed location nor the universal call tracking system altered the existing structure where only fire dispatchers take fire related calls and law enforcement dispatchers take law enforcement calls. PERC held that the fact



the dispatchers all work in the same location does not alter their community of interest because the employees do different types of work, follow different reporting structures, and complete different training requirements. As a result, PERC held that the fire dispatchers could continue to stand alone in a separate bargaining unit represented by the Guild, and it dismissed Teamsters' petition.

## PFR Announcements

### 2024 Bargaining Skills Workshops

Porter Foster Rorick is once again partnering with the Washington School Personnel Association (WSPA) to present our popular workshops on collective bargaining skills. The workshops include a primer on the legal rules for collective bargaining, but also focus on the negotiating skills which help bargaining teams find agreements. These skills are important for all members of a management bargaining team, and particularly as we head into another challenging year for collective bargaining in 2024. The courses are taught by PFR attorneys who regularly represent school districts at bargaining tables with certificated and classified employee unions in Washington State and who collectively have negotiated settlements for more than 800 open labor contracts over the past 30 years.

This year we are offering our classic Bargaining Skills 101 curriculum on two dates: Monday, January 22, and Thursday, February 1. We are also offering a Bargaining Skills 201 curriculum on two dates: Tuesday, January 23, and Friday, February 2. Attendees can choose to come to Bargaining Skills 101 or Bargaining Skills 201, or attendees can choose to come to both workshops on back-to-back days. The workshops will be held at the Two Union Square Conference Center in downtown Seattle with each section limited to 40 participants to

facilitate small group activities and lots of Q&A. The cost is \$295 per day for WSPA members and \$395 per day for non-members, with a \$400 daily discount for districts who send a team of four or more. Lunch and refreshments are included.

If you have any questions about the workshops, please feel free to call any of our attorneys or staff at (206) 622-0203 or reply to [info@pfrwa.com](mailto:info@pfrwa.com).

## Porter Foster Rorick LLP

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