# WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

**February 2020**

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

## Ninth Circuit Court of Appeals

### First Amendment

*L.F. v. Lake Washington School District #414*
No. 18-35792 (1/17/20)

The Ninth Circuit Court of Appeals held that a school district did not violate the First Amendment by requiring a parent to communicate with the district through particular staff members at bi-weekly in-person meetings. A dispute arose between a school district and a parent regarding how to address his daughters' anxiety and behavioral issues. The parent sent school district staff excessive volumes of email laced with accusations of wrongdoing, presumptuous demands, and demeaning insults. The parent's in-person interactions with staff had become aggressive, hostile, and intimidating. To address staff concerns, the district implemented a plan that limited the parent's substantive communications about his daughters' education to bi-weekly, in-person meetings with particular district administrators. Under the plan, district staff would not respond to emails from the parent. The plan did not limit his right to appeal special education decisions or bar his access to school activities or education records. The parent sued the district, alleging that the communication plan violated his First Amendment rights, and constituted retaliation under Section 504 of the Rehabilitation Act and discrimination under Washington law. After the trial court granted summary judgment in favor of the district on all three claims, the parent appealed the dismissal of his First Amendment claim. The Court of Appeals affirmed. The Court held that the district facilities at issue, including its email system, were non-public fora. Because they were non-public fora, the communication plan did not violate the parent's First Amendment rights because it was a reasonable, viewpoint-neutral regulation of speech that simply outlined the types of communication that the district would respond to without restricting the parent's speech.

## Washington Court of Appeals

### Teacher Nonrenewal

*Cronin v. Central Valley School District*
No. 36291-4-III; No. 36666-9-III (1/30/20)

The Washington State Court of Appeals held that a teacher's request for a hearing to appeal his nonrenewal need not specifically cite to RCW 28A.405.210 nor use the word "nonrenewal" to be a valid notice of appeal, and that a teacher who is denied a fair hearing to contest discharge or nonrenewal is presumptively reemployed for the

subsequent school year. The Central Valley School District notified a teacher of probable cause for discharge and nonrenewal due to several allegations of misconduct, a pattern of alcohol related incidents involving students and others, and his unavailability for work while serving a 120-day jail sentence. The teacher's union representative sent a letter to the district on his behalf within the required 10 days requesting a hearing to challenge the district's decision. The letter did not specifically use the word "nonrenewal" or cite to the applicable statute, RCW 28A.405.210. The district refused to provide the teacher a hearing on the grounds that the notice of appeal was required to come from the teacher, not his representative. (The Court of Appeals rejected this argument by the district in an earlier appeal.) After multiple decisions and appeals, the trial court ordered back wages, benefits, and restoration of the teacher's pay status pending a statutory hearing. The district argued before the Court of Appeals that the union representative's letter appealed the discharge, not the nonrenewal, because the letter neither mentioned the applicable statute nor used the word "nonrenewal," and that an employee is not presumptively reemployed if denied an opportunity for a timely hearing. The Court held that the union representative's letter constituted timely notice of appeal of both discharge and nonrenewal because there is no requirement to explicitly refer to the applicable statute or use the word "nonrenewal," and because the letter would not have misled the district about the teacher's intent to appeal nonrenewal since there would be no reason to contest only the discharge and not the nonrenewal when they were based on the same allegations. The Court also held that the teacher is reemployed for the subsequent school years because the district denied him an opportunity for a fair hearing. In a related proceeding, the Court affirmed a trial court decision holding the district in contempt for its willful delay in complying with the order to restore the teacher's employment status.

## PERC

### Interference

*Washington State Department of Ecology*
Decision 13119 (1/3/20)

A PERC examiner held that the Department of Ecology committed an interference unfair labor practice by creating the impression of employer surveillance of union activity. An employee in the Department's technology service center became frustrated with the union, and only communicated with a manager and supervisor as she started to feel isolated from other employees. The employee would alert a manager whenever the shop steward came to check on bargaining unit members. The manager once commented that he could use the employee to learn what the union was doing and sent a supervisor to check on the shop steward's discussions on at least one occasion. Meanwhile, the employee was frequently permitted to telecommute and assigned to work full-time in a more desirable cubicle location on a special project that the rest of the bargaining unit perceived as unnecessary and easier work. The examiner held that the preferential treatment that the employee apparently received as a result of her monitoring had a chilling effect on, and therefore interfered with, union activity. The examiner denied the union's request for extraordinary remedies such as attorney's fees and mandatory training because the impression of surveillance activity was minimal and the Department had initiated appropriate disciplinary action against the manager.

### Contract Interpretation

*Shoreline Community College*
Decision 12973-A (1/16/20)

PERC held that a hearing examiner improperly decided matters of contractual interpretation rather than deferring the matters to arbitration. A bargaining unit represented by the American

Federation of Teachers filed an unfair labor practice claim alleging that Shoreline Community College bargained in bad faith, unilaterally altered collective bargaining agreement provisions for calculating retroactive pay, and withheld data used to calculate this retroactive pay despite the union having received the data months before the ULP was filed. The College asserted a "waiver by contract" affirmative defense in a pre-answer motion, contending that the events underlying the complaint were a contractual dispute subject to the CBA's arbitration provisions, rather than matters to be adjudicated by PERC. The examiner denied the motion and the case proceeded to hearing. The examiner held that there had been no meeting of the minds regarding retroactive pay, and concluded that the College committed a ULP by unilaterally changing the retroactive pay methodology and failing to provide the union the requested information, despite the union receiving the requested information months before the ULP was filed. The College appealed the examiner's decision to the full Commission. PERC held that the entire ULP complaint should have been deferred to arbitration under the terms of the CBA, and determined that PERC should only retain limited jurisdiction to consider a motion for further consideration on showing that arbitration was either conducted in an untimely or unfair manner, or reached a result repugnant to applicable collective bargaining statutes.

## PFR Announcements

### Public Records Disclosure Training

May 5, 9 am to 3 pm
Two Union Square Conference Center, Seattle

Join Valerie Walker and Jay Schulkin for a full day of hands-on training in processing public records requests and avoiding mistakes that lead to liability. This workshop will satisfy the legally-mandated training for district officials and public records officers. The cost is $150 per person and includes lunch. Register by sending an e-mail with the names of attendees to info@pfrwa.com.

## Porter Foster Rorick LLP

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This information is intended for educational purposes only and not as legal advice regarding any specific set of facts. Feel free to contact any of the attorneys at Porter Foster Rorick with questions about these or other legal developments relevant to Washington public schools.

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