WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

February 2022

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

Ninth Circuit Court of Appeals

IDEA

Crofts v. Issaquah School District No. 411
No. 19-35473 (1/12/22)

The Ninth Circuit Court of Appeals held that the Issaquah School District was not required to specifically evaluate a student for dyslexia as part of its initial evaluation under the Individuals with Disabilities Education Act (IDEA). The parents of student A.S. believed that their daughter might have dyslexia, and requested an IDEA evaluation from the District prior to the start of her second-grade year. Before the District initiated its evaluation, A.S.'s parents had her evaluated by a retired school psychologist who determined that A.S. fit the "classic profile" of the specific learning disability of dyslexia. The District proceeded with its own initial evaluation, and it concluded that A.S. was eligible for services under the IDEA's "specific learning disability" category. The District developed an Individualized Education Program (IEP) providing for 40 minutes of reading and writing instruction per day in a special education classroom, as well as accommodations for her general-education instruction, including the use of instructional programs with multi-sensory approaches designed for students who have difficulty reading. A.S.'s parents requested that the District change A.S.'s eligibility category from "specific learning disability" to "dyslexia," and requested that A.S.'s teachers use the "Orton-Gillingham Approach" when instructing A.S., as they believed it was better suited for students with dyslexia. The District declined both requests, and instead continued to utilize evidence-based curriculums and methodologies in the general and special education settings. A.S. made progress toward her IEP goals and improved several reading levels. Nonetheless, her parents believed that A.S. could have made greater progress and requested an independent educational evaluation at the District's expense. The District denied this request and filed a request for an administrative hearing to show that its evaluation was appropriate. A.S.'s parents filed their own hearing request, challenging the adequacy of A.S.'s second- and third-grade IEPs. Following a multi-day hearing, an ALJ determined that the District's evaluation was appropriate and that the IEPs provided A.S. a free appropriate public education (FAPE). The parents unsuccessfully challenged the ALJ's ruling in district court, and then appealed to the Ninth Circuit Court of Appeals. The Court of Appeals similarly rejected the parents' claim that the District should have specifically evaluated A.S. for dyslexia, reasoning that the District appropriately found A.S. eligible for language-related services

under the "specific learning disability" eligibility category which encompasses dyslexia. The Court further held that the District was not required to use the parents' preferred teaching methodology, and it determined that A.S.'s IEPs were reasonably calculated to enable her to make progress in light of her disability, as required by the IDEA.

Washington Court of Appeals

Performance Evaluation

Bawden v. Seattle Public Schools
No. 82391-4-I (1/31/22) (unpublished)

The Washington State Court of Appeals held that a teacher's negative annual performance evaluation did not constitute prohibited harassment, intimidation, or bullying (HIB). Peter Bawden is a teacher at Franklin High School in the Seattle School District. In 2020, Bawden received a "basic" score in three categories of his annual performance evaluation. Bawden disagreed with this score, and he filed a complaint alleging that his negative evaluation violated the District's policy prohibiting HIB. Consistent with the HIB policy, Bawden's complaint was reviewed by the District's Human Resources Manager for Labor Relations, who concluded that the evaluation did not constitute HIB and was instead a reasonable action expected of supervisors. Bawden appealed to the District's Chief Human Resources Officer, who affirmed. Bawden petitioned for review in superior court, which affirmed the District's conclusion. The Court of Appeals likewise affirmed. The Court held that the District's decision was not arbitrary and capricious or contrary to law, reasoning that a negative evaluation did not meet the definition of HIB, which was limited to actions or statements that cause physical harm, substantially interfere with the work environment, are so severe and pervasive that they create a threatening work environment, or substantially disrupt the orderly operation of the workplace. The Court further rejected Bawden's argument that it had the authority to alter the results of his evaluation, concluding that its review was limited to the District's decision that the evaluation did not constitute HIB.

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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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