

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

March 2019

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

PFR Announcements

Public Records Disclosure Training

May 8, 9 am to 3 pm (*note date change*)
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.

Student Discipline Memo

Chapter 392-400 WAC

The Office of Superintendent of Public Instruction (OSPI) has adopted permanent revised student discipline regulations which will become effective in their entirety on July 1, 2019. These new regulations are a marked departure from the student discipline structure that has been in place since 1977, and will require changes in student discipline practices, policies, procedures, and

student handbooks prior to the start of the 2019-20 school year. A memo summarizing the changes is available on the PFR website under the “Resources” tab.

Student Discipline Trainings

Porter Foster Rorick will be holding five regional trainings on the new student discipline regulations. These three-hour trainings will be held at our office in downtown Seattle (July 30, 9:00 am to noon), Burlington-Edison School District (August 1, 9:00 am to noon), Bremerton School District (August 5, 9:00 am to noon), ESD 105 (Yakima) (August 8, 9:00 am to noon), and Ridgefield School District (date and time TBD). Registration is \$175 per person. Reserve a space by sending an email with the names of attendees to info@pfrwa.com.

Washington Court of Appeals

Arbitrability

King County Public Hospital v. Lee
No. 77694-1 (2/11/19)

The Washington Court of Appeals held that a union employee working for a public employer does not waive the right to bring statutory wage and hour claims in court unless the relevant collective bargaining agreement (CBA) clearly and unmistakably says so. Jeoung Lee, a nurse at King

County Public Hospital, filed a lawsuit against the Hospital claiming a denial of statutorily guaranteed breaks. The Hospital argued that Lee had failed to exhaust the CBA's grievance and arbitration process. After months of discovery, the Hospital moved to compel arbitration. The court denied the motion. The Hospital appealed, arguing that Lee's claim was governed by the CBA and thus arbitration must be compelled. The Court of Appeals disagreed, holding that because the CBA did not clearly and unmistakably waive employees' right to bring statutory claims in court, arbitration was not required. The court also held that even if arbitration was required, the Hospital waived its right to arbitrate by litigating the case for nine months before moving to compel arbitration.

Retaliation

Emami v. Seattle School District

No. 77624-0 (2/25/19) (Unpublished)

The Washington Court of Appeals reversed dismissal of Farideh Emami's retaliation claim because there was a genuine issue of material fact as to whether the District denied Emami full employment due to her protected activity under the Washington Law Against Discrimination (WLAD). In 2009, Emami filed an administrative claim against the District, alleging it failed to accommodate her disability. In 2013, Emami was denied a full-time position in the District because her personnel file had been designated "do not rehire." A District administrator placed her application on hold and speculated the designation was because of her earlier threat to sue the District. Emami sued under the WLAD, claiming the District's decision not to hire her was retaliation for engaging in protected activity—specifically, filing a claim for damages when the District failed to accommodate her disability. The trial court dismissed the claim because the administrator's speculation was inadmissible hearsay. The Court of Appeals disagreed, holding the administrator's comments were admissible to show he was aware

she had engaged in protected activity. Further, to succeed on her retaliation claim, Emami need only prove that the District was aware of her protected activity and that it was a substantial motivating factor in the adverse employment action. Thus, the evidence created a genuine issue of material fact as to whether the District had retaliated against her, and the court reversed and remanded the case to the trial court for further proceedings.

PERC

Skimming; Unilateral Change; Subpoena

Wapato School District

Decision 12894-A (1/30/19)

PERC affirmed an examiner's decision that the Wapato School District did not commit unfair labor practices by assigning attendance work to employees other than attendance clerks, and affirmed the Examiner's decision to not enforce a subpoena the complainant unions issued after one of the unions amended its complaint after the second day of hearing. The Wapato Pupil Personnel Association (WPPA) represents the District's attendance clerks. The Wapato Association of Educational Office Personnel (WAEOP) represents the District's secretaries. The District assigned WAEOP secretaries to draft letters for principals' signatures to students with two-to-four unexcused absences. Both unions objected and asserted that the letters were WPPA work. The District offered to bargain the impacts of its decision, but the unions declined and instead filed ULP complaints alleging skimming and unilateral change. The complaints were consolidated. The Examiner dismissed the complaints. The Commission affirmed dismissal of the skimming charge, holding that the letters were not WPPA work because preparing and sending the letters was similar to WAEOP's work of sending other letters on behalf of principals. Because sending the letters was not WPPA work, skimming



did not occur. PERC next affirmed dismissal of the unilateral change allegation, holding that the increase in secretaries' workload was minimal, and that the employer was willing to bargain the impacts of the decision but that WAEOP did not request bargaining. Finally, after the unions rested their case, the Examiner granted WPPA's motion to conform the complaint to the evidence received at hearing. WPPA then issued a subpoena for certain documents, and the District objected. PERC affirmed the Examiner's ruling denying the subpoena's enforcement, holding that amending a complaint to conform to the evidence does not allow a party to later obtain and present new evidence after that party has rested its case.

Refusal to Bargain

Shoreline Community College
Decision 12973 (2/8/19)

A PERC examiner concluded that Shoreline Community College committed a refusal to bargain unfair labor practice when it unilaterally created a methodology to calculate compensation owed to bargaining unit employees without affording the union a right to bargain the methodology. The employer and the union ratified a CBA in which the parties agreed to a set amount of increased compensation for the entire bargaining unit. The union had discussed a preferred methodology for distributing the increased compensation, but the CBA did not memorialize a methodology. During negotiations, the employer stated that it cared about total compensation, but that the union could determine the distribution methodology. When it was time to pay the employees, the employer unilaterally created a distribution methodology contrary to the one proposed by the union during negotiations, and ignored the union's requests to be involved in that decision-making process. The Examiner held that by unilaterally determining the methodology without affording the union an opportunity to bargain, the employer committed a refusal to bargain unfair labor practice.

Porter Foster Rorick LLP

WASHINGTON SCHOOL LAW UPDATE is published electronically on or about the 5th of each month. To be added to or removed from our e-mail distribution list, simply send a request with your name, organization and e-mail address to info@pfrwa.com.

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.

Update Editors



Jon Collins
jon@pfrwa.com



Jay Schulkin
jay@pfrwa.com



PORTER FOSTER RORICK
LLP

601 Union Street | Suite 800
Seattle, Washington 98101
Tel (206) 622-0203 | Fax (206) 223-2003
www.pfrwa.com

Lance Andree
Lynette Baisch
Jon Collins
Tevon Edwards
Cliff Foster

Jeff Ganson
Kathleen Haggard
Kelly Holler
Parker Howell
Lauren McElroy
Rachel Miller

Buzz Porter
Mike Rorick
Jay Schulkin
Valerie Walker
Lorraine Wilson

