

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

March 2020

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

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.

Ninth Circuit Court of Appeals

School Locker Room Facilities

Parents for Privacy v. Barr

No. 18-35708 (2/12/20)

The Ninth Circuit Court of Appeals held that a school district did not violate the U.S. Constitution or Title IX by implementing a student safety plan allowing a student to use restroom and locker room facilities that matched the student's gender identity. In 2015, an Oregon high school student

who is biologically female and identifies as male requested to use the boys' restroom and locker room facilities at school. The student began to use boys' facilities as requested under a student safety plan adopted by the District for that student and any other students who make a similar request. A group of parents then sued the District and several federal agencies, arguing that the student's use of the boys' locker room under the safety plan violated the Fourteenth Amendment, the First Amendment, and Title IX. The federal district court dismissed the claims, and the plaintiffs appealed to the Ninth Circuit Court of Appeals. The Court held that the Due Process Clause of the Fourteenth Amendment grants neither a right for students to not share restrooms and locker rooms with transgender students, nor a parental right to determine the restroom policies of the public schools their students attend. The Court next held that the student safety plan did not create a hostile environment in violation of Title IX by subjecting students to the risk of having their bodies exposed to students of the opposite sex since the student safety plan applies to all students regardless of sex. Finally, the Court also held that the student safety plan does not target religious conduct in violation of the First Amendment because it is a neutral and generally applicable policy rationally related to the legitimate governmental interest in protecting student safety and eliminating discrimination on the basis of sex and transgender status.

Washington Court of Appeals

Public Records Act

West v. City of Tacoma

No. 21487-7-II (1/28/20)

The Washington State Court of Appeals held that the City of Tacoma violated the Public Records Act (PRA) by improperly redacting records under the PRA's exemption for specific intelligence information and by failing to adequately search for and produce responsive records that were listed in a withholding log for a different records request. In 2014, Arthur West requested certain records from the City related to cell site simulator (CSS) surveillance technology the City had purchased from the FBI. The City responded to the request by providing documents with the equipment make, model, and pricing information redacted under the specific intelligence information exemption, RCW 42.56.240(1). West made another PRA request related to CSS technology in 2015, and the City responded by providing documents discussing a grant related to the CSS equipment that may have been in the City's possession at the time of the 2014 request, as well as an additional batch of non-privileged emails and a withholding log noting attorney-client privileged emails that existed at the time of the 2014 PRA request but that were not provided in response to the earlier request. West sued the City for failing to assert a valid exemption for the redacted records, failing to conduct a reasonable search, and failing to produce the records that were later disclosed. The trial court granted partial summary judgment to West on the attorney-client privileged emails since they existed at the time of the 2014 request, and granted partial summary judgment to the City for validly asserting the specific intelligence information exemption. The trial court did not resolve the issues regarding the other emails and the grant materials. The Court of Appeals affirmed the determination that the attorney-client privileged emails should have been

included in the response to the 2014 request, but reversed on the validity of the specific intelligence information exemption because the City failed to show how the make, model, and pricing information for the CSS technology reveals any specific intelligence information as required by RCW 42.56.240(1).

School District Negligence

Meyers v. Ferndale School District

No. 79655-1-I (2/10/20)

The Washington State Court of Appeals reversed a trial court's finding that a school district had no duty to prevent a collision that resulted in a student's death during an off-campus walk taken by the student's class. A high school teacher for the Ferndale School District took his class for an off-campus walk without first obtaining parental permission and without securing additional adult supervision. While the class was walking back to campus, a driver fell asleep at the wheel and drove onto the sidewalk, killing two students. The parents of one of the deceased students sued the District for negligence. The trial court granted summary judgment in favor of the District, finding that the specific collision was not foreseeable as a matter of law and that the District therefore had no duty to take steps to prevent it. The Court of Appeals reversed, finding that the trial court erred by considering only the foreseeability of the specific collision that occurred, rather than considering the foreseeability of the general field of danger attendant to removing students from campus to walk along a sidewalk adjoining a road. The Court next held that there was at least a question of fact about whether it was reasonably foreseeable that having the students walk along a public roadway off the school campus could result in injury from a collision with a car. The Court also rejected the District's alternative argument that any breach of duty could not be the proximate cause of the student's death since there was a genuine issue of material fact whether the



District's breach was a legal cause of the student's harm. As a result, the Court remanded the case for trial.

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



Elliott Okantey
elliott@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
Tevon Edwards
Cliff Foster
Jeff Ganson

Kathleen Haggard
Parker Howell
Lauren McElroy
Rachel Miller
Elliott Okantey
Buzz Porter

Liz Robertson
Mike Rorick
Jay Schulkin
Valerie Walker
Lorraine Wilson

