

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

April 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

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 (August 9, 9:00 am to noon). Registration is \$175 per person. Reserve a space by sending an email with the names of attendees to info@pfrwa.com.

Ninth Circuit Court of Appeals

First Amendment

Michael McNeil v. Sherwood School District
No. 17-35500 (3/14/19)

The Ninth Circuit Court of Appeals held that the Sherwood School District did not violate a student’s First Amendment rights when it expelled him after learning he had written a list of students who “must die” in his private journal. The student’s mother discovered his private journal at

their home. She discovered it contained graphic depictions of violence and a “hit list” of other students who “must die.” She notified the student’s therapist, who urged the mother to notify the police, and the police notified the District. The District expelled the student, and he sued the District for violating his First Amendment rights by punishing him for off-campus speech. The Ninth Circuit held that a school district may regulate off-campus student speech when, given the totality of the circumstances, there is a sufficient nexus to the school. To determine whether there is a sufficient nexus, the court considers (1) the degree and likelihood that the speech at issue will harm the school, (2) whether it is reasonably foreseeable that the speech would reach and impact the school, and (3) the relationship between the content and context of the speech and the school. Given the nature of the speech and the student’s access to firearms, the Court held that the District faced a credible, identifiable threat of violence that bore a sufficient nexus to the school. Thus, the Court dismissed the student’s First Amendment claim.

PERC

Duty to Bargain

Tacoma School District

Decision 12975 (3/14/19)

A PERC examiner held that the Tacoma School District committed an unfair labor practice when it removed its security officers’ firearms without first providing the union a sufficient opportunity to bargain the effects of the firearms’ removal. The District employs a class of security officers represented by IUOE, Local 286 who were historically armed with firearms while on duty. Motivated by philosophical and insurance coverage concerns, the District informed the union that it was likely to recall the firearms. The union demanded that the District not recall the firearms

and, in the alternative, to bargain the change. The District responded that the firearms would be recalled the next day and that the District was developing new procedures to ensure officer safety in light of the recall, and that it hoped to continue to discuss the topic with the union. The District recalled the firearms. Later, the District formally responded to the union’s demand to bargain, offering to bargain the effects of the recall. The parties then engaged in bargaining. The union filed an unfair labor practice complaint alleging the District refused to bargain by unilaterally removing the firearms without providing the union an opportunity to bargain. A PERC examiner concluded that the recall of the firearms was a permissive subject of bargaining and that the District was required to bargain the effects of the recall prior to the recall. The examiner held that although an employer is generally not required to delay implementation of a permissive subject of bargaining while engaging in effects bargaining, because the effects here were sufficiently foreseeable before implementation of the permissive decision, the District was obligated to bargain the effects prior to recalling the firearms. Further, the District did not provide sufficient time for meaningful bargaining prior to implementing the recall, and there was no business necessity for the abrupt nature of the recall. The examiner concluded that the District committed an unfair labor practice and ordered it to bargain the effects of the recall.

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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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