WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

September 2018

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

Washington Supreme Court

Negligence, Vicarious Liability

Anderson v. Soap Lake School District, et al.
No. 93977-2 (8/9/18)

The Washington Supreme Court held that the Soap Lake School District was not liable for the death of two students who died after attending a party at a coach's house. Igor Lukashevich, a basketball coach for the district, invited students to his house and served them alcohol. An intoxicated student left the party and crashed his car on the drive home, killing himself and his passenger, who was also a student. Andersen, the deceased passenger's mother, sued the District under several negligence theories, including negligent hiring, training, and supervision, negligent protection of a student, and vicarious liability. The Court dismissed all of Andersen's claims, concluding that Lukashevich was acting outside the scope of his employment, that the house party was not an off-campus event, and that Andersen failed to show that the District knew or should have known that Lukashevich would serve alcohol to students.

Washington Court of Appeals

Public Records Act, Standing

Creer Legal v. Monroe School District
No. 76814-0 (8/13/18)

The Washington Court of Appeals held that an attorney making public records requests on behalf of a client did not own and thus could not prosecute a claim for violations of the Public Records Act (PRA) where the client had released the claims via settlement. Attorney Erica Krikorian sent several records requests to the Monroe School District on behalf of her client, Erica Miller. Krikorian eventually negotiated a settlement in which Miller agreed to release any potential PRA claims. Krikorian later sued the District, claiming the records requests were hers and that the District denied her an opportunity to inspect records. The Court dismissed Krikorian's claims, holding that because Krikorian was acting as Miller's agent when she made those requests and Miller had released the PRA claims, Krikorian did not own any cause of action arising from those requests, and was not authorized to pursue the claims.

PERC

Interference, Discrimination

Seattle School District
Decision 12842-A (8/2/18)

On appeal, the Commission affirmed dismissal of three of the four issues in the ULP complaint but reversed on the issue of interference, holding that the District interfered with employee rights in violation of RCW 41.56.140(1) when a principal made statements to a custodian about finding a job at a different school. A school principal ordered the school custodian to perform a certain task. The principal was not within the custodian's supervisory chain, and the custodian refused to complete the task. In response, the principal told the custodian that if he did not do the task, he should find another job. The custodian knew that the principal lacked authority to affect his employment. The hearing officer had accepted the District's argument that a reasonable employee in the custodian's position would understand that the principal could not carry out any threats, given she was not in his chain of authority. The District had also argued that any statements by the principal were not related to union activity, but rather an interpersonal conflict with the custodian. The Commission rejected those arguments and stated that a reasonable employee could perceive the principal's comments as threats of reprisal or force for the custodian engaging in protected activity, specifically "refusing to perform work that was not assigned by his supervisor and the union claimed was outside of his unit's work jurisdiction." In addition, the Commission created new precedent by adopting the standard from the Washington Law Against Discrimination (WLAD), Chapter 49.60 RCW, to determine the level of harassment that must occur for a hostile work environment to constitute a deprivation of an employee right, benefit, or status—the second element of a *prima facie* employer discrimination case. Under that standard, a complainant must show that harassment (1) was unwelcome, (2) was because of the employee's protected union activity, (3) affected the terms or conditions of employment, and (4) was imputable to the employer. The harassment must also be "severe and pervasive." Applying that standard, the Commission held that the principal's statements and e-mails during the relevant timeframe "were not sufficiently severe and pervasive to create a hostile work environment."

Permissive Subject of Bargaining

Lincoln County
Decision 12844-A (8/29/18)

The Commission held that both the employer and the union committed an unfair labor practice when the former insisted that collective bargaining be conducted in public and the latter insisted it be conducted privately. Lincoln County passed a resolution declaring that all collective bargaining shall take place in meetings that are open to the public. During one such collective bargaining session, the Union stated that it was ready and willing to bargain, but would do so in accordance with the parties' prior practice of bargaining in private. When the County relied on its resolution that all bargaining shall be conducted in public meetings, Union representatives left the room. Both the County and the Union filed unfair labor practice complaints alleging the other refused to bargain by conditioning their willingness to bargain on whether it would be conducted publicly or privately. The Commission stated that the manner in which collective bargaining sessions occur—i.e., whether bargaining is public or private—is a permissive subject of bargaining. Therefore, the Commission held that both parties had committed an unfair labor practice by conditioning mandatory subjects of bargaining on a permissive subject of bargaining. The Commission ordered both parties

to bargain in good faith without conditioning the bargaining on a permissive subject or file for mediation.

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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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