

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

February 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 from May 7 to May 8)

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.

Washington Supreme Court

First Amendment

Kennedy v. Bremerton School District

No. 18-12 (1/22/19)

The U.S. Supreme Court declined to consider whether the Bremerton School District violated a football coach's First Amendment rights when it placed him on administrative leave because he

prayed with students after football games. The District instructed Coach Kennedy to refrain from praying with students in the locker room or after football games. When Kennedy refused to comply, the District placed him on paid administrative leave. He did not reapply for the position at the end of the year. Kennedy sued, alleging the District retaliated against him for exercising his First Amendment rights. The U.S. Court of Appeals disagreed, holding that because Kennedy was still working within the scope of his employment when he prayed at games, he spoke as a public employee, and the District was therefore permitted to regulate his speech. Kennedy appealed the decision to the U.S. Supreme Court, which denied Kennedy's petition for review. Justice Thomas, joined by three other Justices, wrote a concurrence to the denial, concluding that unresolved factual questions precluded review. Specifically, Justice Thomas explained that it is not clear whether Kennedy's prayer interfered with his actual job duties or whether he was simply praying privately before the workday had ended, indicating the latter might be protected First Amendment conduct. He also argued the Court of Appeals wrongly suggested that school districts may regulate employees' speech at all times from the moment they report for work to the moment they depart. Believing this interpretation misapplied legal precedent, Justice Thomas concluded that review in future cases or at a later juncture in this case may be necessary.

Ninth Circuit Court of Appeals

Special Education

M.S. v. Los Angeles Unified School District
No. 16-56472 (1/24/19)

The U.S. Court of Appeals held that a student was denied a free and appropriate public education as required by the Individuals with Disabilities Education Act (IDEA) when the District failed to consider a residential placement for the student even though a separate state agency had already residentially placed her for mental health treatment. The Los Angeles County Department of Child and Family Services (the “Department”) had placed M.S., a student in the District, in a residential treatment facility for mental health treatment. At several IEP meetings, the District failed to consider offering M.S. a residential educational placement. The District believed it had no legal obligation to do so because the Department had already determined M.S.’s placement. The Court disagreed, holding that although the Department had a legal obligation to determine the appropriate placement to address M.S.’s mental health needs, the District had a separate legal obligation under the IDEA to ensure that a continuum of alternative placements was available to meet M.S.’s educational needs. The Court further held that the District’s failure to discuss the potential necessity of a residential placement as part of M.S.’s IEP denied her a free and appropriate public education.

Washington Court of Appeals

Public Records Act

Asotin County v. Eggleston
No. 35720-1 (1/17/19)

The Washington Court of Appeals held that a requestor was entitled to attorney fees and costs

under the Public Records Act (PRA) when Asotin County filed an unsuccessful motion to enjoin disclosure. Eggleston requested the County provide legal invoices incurred by the County in actions involving him. The County filed a motion in superior court requesting an order to show cause as to why the disclosure of the invoices should not be enjoined. Eggleston retained counsel to dispute the motion and ultimately succeeded, but the trial court denied Eggleston’s request for attorney fees, costs, and penalties because he did not initiate the legal action. The Court of Appeals reversed, holding that Eggleston was the prevailing party and was thus entitled to attorney fees, costs, and the trial court’s consideration of penalties even though he did not initiate the legal action.

PERC

Duty to Bargain

City of Issaquah
Decision 12963 (1/18/19)

A PERC examiner concluded that the City of Issaquah committed a refusal-to-bargain unfair labor practice when it failed to bargain the impacts of changes to its employees’ health-care network, and unilaterally expanded preventative care coverage to fully cover certain providers at in-network rates. The City self-funds employee health benefits, and contracts with Premera to be its third-party medical plan administrator. Certain medical providers are “in-network,” and others are “out-of-network.” The City changed networks in 2016 and mitigated impacts on employees by expanding preventative care coverage. The union demanded to bargain the decision to change networks and the effects of the decision, and the City refused. The union alleged that this refusal constituted an unfair labor practice. The Examiner concluded the network change was a business necessity and so the City was not required to bargain the decision, but the City was nevertheless required to bargain the



impacts of the decision, and by refusing to do so committed an unfair labor practice. Further, by unilaterally expanding preventative care coverage, the District violated its duty to bargain even though the change arguably enhanced employee benefits.

Discrimination

University of Washington
Decision 12964 (1/24/19)

PERC concluded that the University of Washington did not commit a discrimination unfair labor practice when it refused to authorize automatic payroll dues deductions for a union that did not represent the University's employees. Faculty Forward ("union") is a chapter of SEIU, Local 925. The union started a campaign to organize the University's faculty. The union has not filed a petition for representation or otherwise been recognized as the faculty's exclusive bargaining representative. The union requested that the University authorize automatic payroll deductions for faculty seeking to financially support the union. The University refused, explaining that it did not want to create a policy of beginning automatic payroll deductions for unions during organizing campaigns, and that the University desired to avoid learning the identities of employees actively supporting the organizing process. The union filed an unfair labor practice complaint, alleging that the University's refusal constituted discrimination. The Examiner dismissed the allegations, concluding that the statute covering faculty bargaining at universities and related PERC precedents only require an employer to provide payroll deductions for a bargaining unit's exclusive bargaining representative. Because the union was only at the organizing stage and was not the faculty's exclusive bargaining representatives, it was not entitled to automatic dues deductions, and the Examiner concluded that the University had not committed discrimination.

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



PORTER FOSTER RORICK
LLP