

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

November 2021

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

PFR Announcements

Public Records Disclosure Training

November 9, 2021, 9 am to 3 pm
Two Union Square Conference Center, Seattle

Join Jay Schulkin and Elizabeth Robertson 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.

Registrations have reached capacity for this event, but names are being added to a waiting list in case there are cancellations.

Ninth Circuit Court of Appeals

Individuals with Disabilities Education Act

S.C. v. Lincoln County School District
No. 21-35242 (10/18/21)

The Ninth Circuit Court of Appeals held that an unchallenged ALJ order changing a student's

educational placement constitutes the student's "then-current" placement for purposes of stay put. High school student S.C. has Prader-Willi Syndrome, a rare genetic condition that disrupts the body's appetite control, resulting in intense food-seeking thoughts, poor impulse control, and behavioral issues. Treatment includes total food security, a system in which food is only provided at mealtimes but is otherwise kept locked up and out of sight. S.C. had received special education services from the school district since the 2015-16 school year. In May 2020, S.C.'s mother filed a due process hearing request challenging the provision of FAPE during the prior two school years. The case proceeded to hearing, and the ALJ concluded that the district had denied S.C. a FAPE because she required total food security in the school-wide environment to obtain meaningful educational benefit. As a remedy, the ALJ ordered that S.C. be placed in a residential facility that treats students with Prader-Willi Syndrome and provides them total food security. The district did not appeal the ALJ's order, but it also failed to make any arrangements to enroll S.C. in the residential facility. S.C.'s parents filed a lawsuit in federal court seeking a stay put order requiring the school district to comply with the ALJ order. The district court denied the parents' request and held that they were required to challenge the most recent IEP—which was finalized while the due process hearing was pending—in order to file a motion for stay put. The Ninth Circuit Court of Appeals

reversed, holding that the district court erred in failing to grant the parents' stay put motion. The Court further held that a final, unchallenged ALJ order constitutes an agreement between the parents and state for purposes of stay put. Because the district had not challenged the ALJ's order, the Court concluded that S.C.'s educational placement had changed to the residential facility for purposes of stay put.

Washington Court of Appeals

Public Records Act

West v. City of Tacoma

No. 54412-1-II (10/19/21) (unpublished)

The Washington State Court of Appeals dismissed Arthur West's challenge to a superior court order imposing a public records training requirement on the City of Tacoma for its violation of the PRA. In 2018, the Court of Appeals held that the City violated the Public Records Act (PRA) by silently withholding records responsive to West's PRA request. On remand, the trial court ordered the City to pay West a penalty of \$36,800 and \$600 in costs. The trial court also expressed concern that local governments were becoming less responsive and candid in responding to PRA requests. As a result, the court ordered the City Attorney's Office to provide training on the PRA for the City's department heads. West appealed the training requirement imposed on the City, arguing that the trial court could only impose monetary penalties to deter future noncompliance with the PRA. The Court of Appeals held that West could not challenge the training requirement because he was not aggrieved by the order. The Court reasoned that the training requirement had no direct impact on West or the monetary award he received. As a result, the order did not adversely impact West's personal, property, or pecuniary rights, and he was not entitled to challenge the training requirement on appeal.

Public Records Act

Estate of Torres v. Kennewick School District

Nos. 36886-6-III, 37777-6-III (10/28/21)

(unpublished)

The Washington State Court of Appeals held that the Public Records Act (PRA) does not require agencies to explain why certain records sought by the requestor are not available. In September 2017, Jonny Torres, a sixth-grade student in the Kennewick School District, was hospitalized for serious asthma complications, which his parents believed resulted from his participation in a PE class a week earlier. Torres's condition worsened, and he was declared brain dead and removed from life support on September 26. Upon learning that Torres had been hospitalized, the district directed the middle school's security officer to save all security video recorded of Torres during the week leading to his hospitalization. The security officer preserved every segment of recorded video in which Torres appeared beginning with his fifth period PE class on September 7. Because security video footage consumes significant storage space, the school district allocates enough space to store 30 days of video footage, at which point it is automatically deleted to make room for new video unless specific footage has been proactively saved. As a result, any security video that the school security officer had not preserved was no longer available after 30 days. Approximately three months following Torres's death, his estate's lawyers sent a public records request to the district, seeking any documents, videos, writings, or emails related to Torres, including all video footage of Torres at school on September 7. In response, the district disclosed all the video segments of Torres in its possession, which were limited to those which had been preserved by the security officer shortly following Torres's hospitalization. The Estate's lawyers requested an explanation regarding whether some of the requested footage had been lost or destroyed. The district's attorney did not



directly answer the question, writing that if any additional video was found, it would be disclosed. The Estate filed a PRA lawsuit, alleging in part that the district had failed to explain why hours of video footage from September 7 had been lost or destroyed. The Estate also alleged that the district had failed to produce other records that were responsive to its PRA request. The trial court granted summary judgment in favor of the district, dismissing the Estate's claims with prejudice. The Court of Appeals affirmed dismissal of the claims related to disclosure of the requested video footage. The Court held that the brief explanation requirement of the PRA only applies when an agency refuses inspection of a public record based on a specific exemption, but it does not require agencies to research or provide an explanation of why certain records are not in its possession. The Court further held that the trial court had failed to consider the Estate's claims that other records responsive to its PRA request had been improperly withheld, and it remanded for the trial court to consider whether the district was entitled to summary judgment on those claims.

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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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