

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

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

Ninth Circuit Court of Appeals

First Amendment

The Koala v. Khosla

No. 17-55380 (7/24/19)

The Ninth Circuit Court of Appeals held that a public university violated the First Amendment rights of a student newspaper when the university's student government revoked the newspaper's funding in response to a satirical article. The student newspaper published a satirical article in 2015 that attracted complaints from the university community and condemnation from the university administration. The student government then dissolved the student-run print media portion of the student activities fund, which prevented the newspaper from publishing print issues for the rest of the academic year. The trial court initially granted summary judgment for the university. The Court of Appeals reversed, holding that the newspaper's claims that the university targeted the newspaper with the intent to shut it down due to its disfavored speech were sufficient to survive summary judgment, that the student activities funding had been used as a limited public

forum that the university could not alter for the purpose of restricting speech it did not favor, and that the fund had been dissolved in retaliation for the newspaper's protected speech.

Special Education

Paul G. v. Monterey Peninsula USD

No. 18-16536 (8/12/19)

The Ninth Circuit Court of Appeals held that a California student seeking damages under the ADA and Section 504 of the Rehabilitation Act was required to exhaust the IDEA administrative process before filing a lawsuit. A California school district created an IEP calling for a residential placement for an 18-year-old high school student. The student enrolled at a Kansas residential facility because no residential facility in California accepted him due to his age. California's Office of Administrative Hearings dismissed one portion of his IDEA administrative due process complaint, and the student entered a settlement agreement with the school district regarding the other portion of the complaint without an administrative determination as to whether the district had denied him FAPE. The student then sued California under the ADA and Section 504 for denying him FAPE by having no residential facility in the state that he could attend due to his age. The Court of Appeals upheld the district court's dismissal of the claim against the state because the student had not

exhausted the IDEA administrative process as to his district court allegations where he settled before he had received an administrative determination regarding the allegations.

Washington Court of Appeals

Public Records Act

Freedom Foundation v. Washington State DSHS
No. 51498-2-II (8/6/19)

The Washington Court of Appeals held that DSHS did not violate the PRA by providing an unreasonable estimate of the time that would be required to fulfill a request, or by providing records to the requestor only after first providing the records to an interested third party. DSHS estimated that it would take 30 days to provide the Freedom Foundation with records related to contracting and training for individual providers represented by SEIU. DSHS did provide the records within that 30-day time period, but only after first producing the same records to SEIU with enough time for SEIU to determine whether it would seek to enjoin the release of the records. The Freedom Foundation claimed that the narrow scope of the request and low volume of responsive records made DSHS's 30-day estimate unreasonable, and that DSHS unlawfully distinguished between requestors by providing the records to SEIU first. The Court of Appeals disagreed, holding that DSHS made a reasonable time estimate based on a forward-looking evaluation at the time of the request, and that distinguishing between two requestors when one requestor is also an interested third party who might seek to enjoin the release of the records is consistent with the PRA's requirements.

Student Truancy Petitions

Chimacum School District v. RLP
No. 51327-7-II (8/20/19)

The Washington Court of Appeals held that a school district failed to take the statutorily required steps to address student absences before filing a truancy petition in juvenile court. After a principal met with a student's parent regarding the student's numerous absences, the principal offered services to address the student's attendance issues. After the student continued to accumulate absences over the next several months, the District filed a truancy petition with the juvenile court without first performing the Washington Assessment of the Risks and Needs of Students (WARNS). The juvenile court determined that the District had met its statutory duty before filing the truancy petition by providing services to address the student's attendance issues. The Court of Appeals reversed, holding that the District did not comply with its statutory obligations to conduct a WARNS assessment before filing a truancy petition, to address student attendance issues through data-informed steps such as applying the results of the WARNS assessment, and to list all attempted interventions in the truancy petition.

Superior Court

Public Records Act

WSAMA v. WCOG
No. 18-2-21182-4 SEA (7/9/19)

The King County Superior Court held that the Washington State Association of Municipal Attorneys (WSAMA) is the functional equivalent of a public agency and is therefore subject to the



Public Records Act (PRA). The Washington Coalition for Open Government (WCOG) made a public records request to WSAMA for certain records. WSAMA moved for summary judgment and a permanent injunction arguing that it was not a public agency subject to the PRA, and WCOG filed a cross-motion for partial summary judgment. The court granted partial summary judgment in favor of WCOG after weighing various factors regarding WSAMA's purpose and organization. The court found that WSAMA is not statutorily recognized as an agency carrying out state policy and was not created by the government, but is instead incorporated as a private nonprofit that performs educational, professional networking, and amicus functions that are outside of the exclusive domain of government. However, the court also found that WSAMA's board and voting members are city attorneys acting within the scope of their public employment, the board and amicus committee use taxpayer-funded resources for WSAMA activities, and the amicus committee makes decisions and recommendations of enormous importance to the public entities WSAMA represents. Weighing these factors, the court held that WSAMA is the functional equivalent of a public agency and is thus subject to the PRA, and dismissed WSAMA's claims with prejudice.

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