PORTER FOSTER RORICK LLP

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Washington School Law Update

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

Ninth Circuit Court of Appeals

Disability Discrimination

Mattioda v. Nelson
No. 22-15889 (4/22/24)

The Ninth Circuit Court of Appeals held that a disability-based harassment claim based on hostile work environment is available under both the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (Rehabilitation Act). Dr. Andrew Mattioda, a scientist with the National Aeronautics and Space Administration (NASA), has physical disabilities affecting his hips and spine, which he alleged require him to purchase premium-class airline tickets for work-related travel. According to Mattioda, his supervisor repeatedly made disparaging comments regarding his disability, including telling colleagues that Mattioda used his medical and disability issues to avoid work. Mattioda further alleged that his supervisor refused to support his nomination for a promotion despite supporting other candidates, and he refused to involve Mattioda in projects that required Mattioda to submit a travel request. According to Mattioda, another supervisor also warned Mattioda that he would lose his job if he kept requesting travel accommodations. During a performance review in 2013, Mattioda's supervisor allegedly questioned whether he was committed to being a high-profile scientist at NASA, criticized him for not traveling, and lowered his performance rating. After he was passed over for a senior scientist position at NASA, Mattioda filed a complaint in federal district court, alleging various claims under the Rehabilitation Act, including hostile work environment, harassment, and discrimination. The district court dismissed Mattioda's harassment claims, concluding that Mattioda had failed to allege facts showing that he suffered severe or pervasive harassment or that there was a link between such harassment and his disability. The Ninth Circuit Court of Appeals reversed dismissal of Mattioda's hostile work environment claims, first holding that such claims were cognizable under either the ADA or Rehabilitation Act. The Court noted that it had not previously addressed whether allegations of a hostile work environment could support an ADA or Rehabilitation Act claim, but that other circuit courts had concluded such claim was cognizable under either statute. The Ninth Circuit joined other circuit courts in holding that a disability-based harassment claim is available under the ADA and Rehabilitation Act. The Court further held that Mattioda had alleged sufficient facts based on his supervisors' alleged comments for a jury to find he was subjected to harassment based on his disability and that the harassing conduct was sufficiently severe or pervasive to alter the conditions

of his employment. As a result, the Court reversed dismissal of Mattioda's hostile work environment claim and remanded to the district court for further proceedings.

Washington Supreme Court

Public Records Act

Cousins v. Department of Corrections
No. 101769-3 (4/11/24)

The Washington Supreme Court held that an agency's letter informing a requestor that their public records request is "closed" is not necessarily a final, definitive response triggering the one-year statute of limitations under the Public Records Act (PRA). The Court further held that a sufficient closing letter "should" contain the following information: (1) how the PRA request was fulfilled and why the agency is now closing the request; (2) that the PRA's one-year statute of limitations has started to run; and (3) an invitation for the requestor to ask follow-up questions within a reasonable time frame. Terry Cousins submitted a PRA request to the Washington Department of Corrections (DOC) in July 2016 after her sister died in DOC custody. The request sought all records related to Cousins's sister from January 2014 to the present. The DOC provided responsive records to Cousins in installments between November 2016 and January 2019, at which point it issued a letter stating that the request was now closed and inviting follow-up questions. During the time the request was pending, Cousins repeatedly notified the DOC that she believed certain email attachments were missing from records that had been provided, and she inquired about chemical dependency records that she believed were missing. In May 2017, Cousins submitted a second request for the records she believed were missing from the first installments to the extent those records were not covered by the first request. The DOC did not open a new PRA request, but instead responded that it was still providing records responsive to her request. When the DOC issued its closing letter in January 2019, it had not provided the email attachments or chemical dependency records that Cousins had previously identified as missing. After receiving the closing letter, Cousins sent several follow-up emails to the DOC asking about the missing records, to which the DOC once responded that the chemical dependency records had been produced and then did not respond to Cousins's follow-up inquiries. Because the DOC had answered questions about certain missing records, Cousins believed that she and the DOC were still conversing about which records were missing and where they were. During that time, the public records officer left the DOC, and Cousins began conversing with the new public records officer, including sending the new officer an email in November 2019 listing the records Cousins believed were missing. The new public records officer believed Cousins's PRA request was already closed, in part due to mistaken information in the PRA file from the preceding records officer, but realizing the mistake in July 2020, she reopened Cousins's request. Between August 2020 and June 2021, DOC staff actively searched for additional records, and it produced additional installments with the missing records in November and December 2020, January 2021, and June 2021. In June 2021, after producing a sixteenth installment, the DOC sent Cousins a letter explaining that her request was now closed. Cousins filed a complaint against the DOC in January 2021, alleging violations of the PRA. The trial court dismissed Cousins's lawsuit as a matter of law, ruling that her claims were time-barred because the one-year statute of limitations was triggered by the first closing letter issued in January 2019. The Court of Appeals affirmed, holding that prior caselaw had created a "bright-line rule" by which the agency's response that the request was closed—even if it is later reopened—triggered the statute of limitations. The Washington Supreme Court reversed, holding that no such "bright-line rule" exists. Instead, the Court held that only a "sufficient" closing letter may trigger the statute of limitations, and relying on the Washington Attorney General's Office's model rules on PRA compliance, the Court held that a sufficient closing letter contains the following elements: (1) an explanation of how the PRA request was fulfilled and why the agency was closing the request; (2) notification that the one-year statute of limitations has started to run because the agency does not intend to respond further to the request; and (3) an invitation for

the requestor to ask follow-up questions within a reasonable time frame, which may be specified by the agency. Applying this framework, the Court held that a reasonable person in Cousins's position would not be on notice that the agency would no longer respond to the request following January 2019, given that it had promptly answered some of her questions, but then ignored other questions about identified missing records. The Court held that based on these interactions, Cousins reasonably believed that the agency was still responding to her request and intended to produce additional records, which it did through June 2021. As a result, the Court held that the June 2021 closing letter triggered the statute of limitations and it reversed dismissal of Cousins's PRA lawsuit.

Washington Court of Appeals

Interference

WA Interpreters v. Washington Public Employment Relations Commission
No. 58071-3-II (4/16/24)

The Washington Court of Appeals affirmed dismissal of an unfair labor practice (ULP) complaint filed by WA Interpreters, a bargaining representative for independent language access providers (LAPs) who provide contract interpretation services for the Washington Department of Labor and Industries (L&I). L&I purchases interpretation services for medical providers and vocational counselors from LAPs. Until 2021, L&I purchased services from LAPs through different options, including booking LAPs through an interpretation agency or booking with them directly as independent interpreters. In 2018, the legislature passed a bill requiring L&I to purchase in-person spoken language interpreter services directly from LAPs or through limited contracts with scheduling and coordinating delivery organizations, or both. L&I decided it would use both options, and it communicated its decision in 2018 through an online notification system and its website. L&I continued to communicate with the LAPs and other stakeholders in 2019, notifying them that it would be contracting with scheduling organizations and requested proposals in July 2019. L&I eventually selected the Interpreting Works Scheduling System (IW system), and it communicated that decision to the LAPs in July 2020. L&I then invited LAPs to participate in a study regarding the IW system's registration process, and it hosted a series of webinars about the new system in September 2020. In November 2020, WA Interpreters filed a representation petition with the Public Employment Relations Commission (PERC), seeking certification as the exclusive bargaining representative of LAPs providing interpreter services for injured workers and crime victims receiving benefits from L&I. While the representation petition was pending, L&I announced that the launch date for the new IW system would be April 2021, and it encouraged LAPs to register because interpreters could only be paid using the new system to schedule appointments. WA Interpreters filed a ULP complaint in March 2021, alleging that L&I had unilaterally changed the way LAPs scheduled their appointments, and in doing so, L&I had violated its duty to maintain the status quo while a representation petition was pending with PERC. Following an evidentiary hearing, a PERC Examiner held that the implementation of the IW system was part of the "dynamic status quo" and therefore dismissed the ULP complaint. WA Interpreters appealed to PERC, which affirmed the Examiner's decision. WA Interpreters then filed a petition for review in superior court under the Administrative Procedure Act, arguing that PERC had erred in determining that the new system was part of the dynamic status quo. The superior court affirmed PERC's decision and dismissed WA Interpreter's complaint. The Court of Appeals affirmed, first acknowledging that PERC precedent requires an employer to maintain the status quo with respect to wages, hours, and working conditions when a representation petition is pending. However, the Court held that the dynamic status quo doctrine is an affirmative defense that recognizes employers occasionally need to take action to follow through with changes that were set in motion prior to the union filing its representation petition. Based on the facts here, the Court held that L&I had established this affirmative defense given that it had already chosen the IW system before the representation petition was filed, and it had communicated that decision well before November

2020, including offering the LAPs webinars about the new system in September 2020. Because L&I had taken steps to initiate the new scheduling system before the representation petition was filed, the Court held that PERC's decision did not misapply the doctrine of dynamic status quo, and it affirmed dismissal of the ULP complaint.

Public Records Act

Hood v. Centralia College
No. 58362-3-II (4/23/24) (unpublished)

The Washington Court of Appeals affirmed dismissal of Eric Hood's public records lawsuit against Centralia College, rejecting Hood's claim that certain "litigation requests" he made during discovery in separate Public Records Act (PRA) litigation constituted new public records requests. In September 2019, Hood submitted a public records request with the College seeking records pertaining to a recent audit. Unsatisfied with the College's response, in October 2020, Hood filed a lawsuit against the College alleging various violations of the PRA. During that litigation, Hood made discovery requests—which he later referred to as "litigation requests"—including a request for production seeking all records related to the state audit that had not been provided in response to Hood's 2019 request. Hood also responded to an interrogatory in which he explained that the phrase "response to the audit" in his 2019 PRA request included any reply or reaction to the audit or audit report, as well as a link to a resource on the auditor's website. The College produced 1,737 pages of records in response to Hood's discovery requests, producing its final response in June 2021. The trial court eventually dismissed Hood's lawsuit against the College, finding that its interpretation of his 2019 records request and search for responsive records were reasonable. In March 2023, Hood filed a new PRA lawsuit against the College, alleging that the "litigation requests" he submitted during discovery in the 2020 litigation constituted new requests for public records, to which he alleged the College failed to adequately respond or provide responsive records. The trial court dismissed Hood's 2023 lawsuit, finding that issues related to the 2019 records request had already been decided in the 2020 litigation, and also that this new claim was time-barred by the one-year statute of limitations under the PRA. The Court of Appeals affirmed, holding that the records requests Hood made during discovery in the prior litigation did not provide the College with fair notice that they were public records requests subject to the PRA. In dismissing Hood's claims, the Court reasoned that the "litigation requests" merely sought to define the scope of the 2019 records request or repeatedly demanded records Hood deemed responsive to his 2019 records request. Hood also invoked the civil rules of discovery when making the "litigation requests," suggesting he was not invoking the authority of the PRA when seeking those documents. The Court held that holding otherwise would be "absurd" and would create a situation where discovery disputes and briefing in PRA litigation would become "an endless breeding ground" for new public records requests. Given the language and context of Hood's "litigation requests," the Court held that the College was not on notice that Hood was invoking the authority of the PRA in seeking those documents, and it affirmed dismissal Hood's lawsuit in its entirety.

Public Records Act

Hood v. City of Prescott
No. 39618-5-III (4/30/24) (unpublished)

The Washington Court of Appeals reversed dismissal of a Public Records Act (PRA) lawsuit filed by Eric Hood against the City of Prescott, holding that the City did not present sufficient evidence to show its search was adequate as a matter of law. In September 2019, Hood emailed the City a request for records related to its recent audit, seeking "all records it got from the auditor" and all records of any response to the audit or to the audit report. The city attorney reviewed the request, determined it was vague and confusing, and asked Hood for clarification as to what types of documents he was seeking and whether he was referring to reports issued by the auditor. Hood never answered the request for clarification directly, but instead, he responded by narrowing his request to all records of any response to the Accountability Report dated March 28, 2019. Hood also stated that he sought communications, including attachments, between the

City and auditor from February 1, 2019, to the present, as well as any internal records of responses to the auditor or auditor's report during that time range. The City provided Hood with the records it believed were responsive and invited Hood to follow up with any questions. In November 2020, Hood filed a PRA lawsuit against the City, alleging that it had withheld records that were responsive to Hood's request. The City moved for summary judgment, arguing that its search was reasonable as a matter of law and, in support, it filed a declaration from the city attorney, explaining that the City had interpreted the request as seeking communications between the City and Auditor in response to the audit report. The trial Court granted the City's motion, finding that it presented sufficient evidence it conducted an adequate search and therefore no records had been improperly withheld. The Court of Appeals reversed, holding that there remained a disputed issue of fact as to the scope of Hood's request, and that both parties' interpretation of the scope of the request was plausible. As a result, the Court held that questions related to the scope of the request must be determined through a fact-finding hearing, not as a matter of law on summary judgment. The Court further held that the city attorney's declaration did not show that the search was adequate as a matter of law because it contained no information regarding the specific search terms used, the types of searches performed, or the locations searched. As a result, the Court reversed dismissal of Hood's PRA lawsuit, and it remanded to the trial court for further proceedings.

PERC

Discrimination

Clark County Fire District 6
Decision 13810 (4/3/24)

A PERC Examiner dismissed a discrimination unfair labor practice (ULP) complaint filed by the International Association of Fire Fighters Local 452 (Union), finding that the employer's decision to not promote the Union president to an open Battalion Chief position was substantially motivated by his performance during the interview process, not by union animus. Ryan Reese has served as a career Firefighter with Clark County Fire District 6 (County) for more than 24 years. Reese was first hired as a Firefighter/Paramedic in 1999 and was promoted to Captain/Paramedic in 2013. Reese has received excellent performance evaluations during his time with the County, specifically commending his work performance, leadership, and relationships with his chain of command. Reese is also a long-term union leader, and he has served as Vice President and President of the Union, as well as the Fifth District Representative with the Washington State Council of Firefighters, a role in which he represented 29 locals in the southwest region of Washington State. Through his leadership roles, Reese has engaged in collective bargaining on behalf of the Union and filed grievances, including a grievance in 2022 in which the Union successfully challenged discipline administered to a Firefighter/Paramedic. In 2022, one of the County Battalion Chiefs announced he was retiring effective January 2023, and the County began the process for filling the vacant position. Consistent with the collective bargaining agreement with the Union, the County first considered candidates who had passed an examination to be included on the eligibility list for the Battalion Chief position. Of the three internal candidates on that list, Reese had scored the highest on the written test and assessments. The County individually interviewed the three internal candidates, including Reese, in October 2022. The four Fire Chiefs on the interview panel all believed that Reese's interview answers were generic and lacked depth. For example, in response to the question asking candidates to identify their most challenging assignment and how they had prepared for it, Reese's answer was simply "being a captain." By comparison, the other candidates provided detailed answers including describing a situation in which they had to terminate a well-liked member of the crew or address dishonesty among the crew, which the interview panel believed evidenced depth and understanding needed for the Battalion Chief position. Jeff Killeen, the internal candidate who ultimately received the promotion, had also prepared for the interview by meeting with nearly every member of the fire department, including secretaries, to gather input regarding the Battalion

Chief position. After the County announced that Killeen had received the promotion, the County met with Reese and explained that Killeen had been selected because of his softer leadership approach, which showed he could relate to a younger generation of employees. During that discussion, Reese acknowledged that his answers during the interview process could have been better. In April 2023, the Union filed a ULP complaint against the County, alleging that Reese was passed over for the Battalion Chief position in reprisal for his union activity, which constituted a discrimination ULP. Following an evidentiary hearing, the Examiner dismissed the complaint. The Examiner first held that Reese had established a prima facie case of discrimination given Reese's leadership role in the Union and the timing of the interview in relation to the 2022 discipline grievance. However, the Examiner held that the County articulated a legitimate non-discriminatory reason for passing Reese over based on his performance during the Battalion Chief interviews and its desire for a softer leadership approach. The Examiner concluded that the weight of the evidence at hearing showed that the decision to promote Killeen over Reese was substantially motivated by Killeen's superior performance during the interview process, not by union animus, as even Reese admitted that he could have been better prepared for the interviews. As a result, the Examiner dismissed the Union's discrimination ULP.

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