PORTER FOSTER RORICK LLP

September 2024

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

Freedom of Information Act

Pomares v. Department of Veterans Affairs
No. 23-55205 (8/13/24)

The Ninth Circuit Court of Appeals held that a federal agency's method of manually reviewing electronic records in response to a records request was reasonable and constituted an adequate search under the Freedom of Information Act (FOIA), the federal law which Washington courts look to for guidance when determining the adequacy of a search under the Washington Public Records Act (PRA). Maria Pomares submitted three FOIA requests to the federal Department of Veterans Affairs (VA), which sought emails received or sent by several VA officials, including its Executive Director. In response, the VA's Information and Technology office (ITOPS) performed an electronic search for emails containing terms specified by Pomares in her request. After ITOPS gathered the emails, the VA manually reviewed each email to determine if it was responsive to the request and if so, whether any exemption to disclosure applied. Pomares filed a lawsuit against the VA, alleging in part that the VA's manual review of the electronic emails was unreasonable and violated FOIA. The district court dismissed the complaint on summary judgment, ruling in part that FOIA authorizes either manual or electronic searches, and therefore, the VA's search was reasonable. Pomares appealed, and the Ninth Circuit Court of Appeals affirmed, agreeing with the district court that manual review of electronic records was permissible under FOIA. The Court rejected Pomares's argument that FOIA's definition of "search," which includes "review, manually or by automated means" meant that electronic records must be searched electronically. The Court held that nothing in the text of FOIA prohibits an agency from manually reviewing electronic emails as part of its search process. As a result, the Court held that the VA's search methodology was reasonably calculated to uncover all relevant documents, and therefore, compliant with FOIA. The Court affirmed dismissal of Pomares's complaint as to the adequacy of the search.

IDEA

J.B. v. Kyrene Elementary School District
No. 22-16816 (8/20/24)

The Ninth Circuit Court of Appeals held that an Arizona school district was not obligated to provide special education services to a student enrolled in private school after the parent had refused to consent to the proposed reevaluation and had made clear that

she did not intend to enroll her child in public school. J.B. was enrolled in Kyrene Elementary School District No. 28 ("District") during the 2013-14 school year. J.B. has complex disabilities which manifested in behavioral challenges. During the first month of the 2013-14 school year, District staff restrained J.B. multiple times in accordance with a behavioral support plan it had developed, prompting the Individualized Education Program (IEP) team to meet in October 2013 to discuss alternative placement options. At the meeting, the District offered to pay for J.B. to be educated at Brightmont Academy, a private school, for the rest of the academic quarter. The District continued to meet with J.B.'s parent in the fall to discuss his transition back to the District in early 2014, and it proposed a reevaluation as part of that process. J.B.'s parent refused to agree to any testing, and she refused to allow District staff to observe J.B. as part of the reevaluation process, insisting instead that the District only review video and audio recordings of J.B. at Brightmont. After refusing to consent to the District's proposed evaluation, the parent requested an independent education evaluation, which the District denied. The District later issued a prior written notice (PWN) in December 2013 stating that no further IEP meetings for J.B. would take place because J.B. was not currently enrolled in the District. J.B.'s parent filed a due process hearing request, alleging that the District violated the Individuals with Disabilities Education Act (IDEA) by failing to provide a free appropriate public education (FAPE) to J.B. Following a nine-day evidentiary hearing before the Office of Administrative Hearings, the presiding administrative law judge (ALJ) issued a 130-page decision in favor of the District on all issues. The parent appealed and the district court affirmed in part, but reversed the ALJ's decision as to four issues. On remand, the ALJ again found in favor of the District, and the district court affirmed that decision. J.B.'s parent appealed, and the Ninth Circuit Court of Appeals affirmed the judgment of the district court affirming the ALJ decision. The Ninth Circuit first held that the ALJ's determination that the parent was not credible and its determination that the parent did not intend to enroll J.B. in public school were supported by the extensive administrative record. Because the parent had made clear she did not intend to enroll J.B. in public school, the Court held that the District was relieved of its obligations under the IDEA to develop a new IEP or to provide a FAPE. Next, the Court held that the District committed a procedural violation of the IDEA by stating in the PWN that the reason it was discontinuing services was because the student was not enrolled in the District. The Court held that the student's enrollment status was not a valid reason for declining to hold IEP meetings because the IDEA requires the school district in which the child resides to make a FAPE available. Nonetheless, the Court held that the error was harmless because the District had lawful reasons for refusing to proceed with an evaluation or schedule an IEP meeting based on the parent's refusal to consent to the evaluation, rejection of the District's prior offer of FAPE, and statements that she did not intend to enroll J.B. in the District. Judge Collins dissented and would have held that the procedural violation was not harmless because the parent may have agreed to the proposed evaluation and participated in the IEP process had a valid justification for discontinuing services been provided in the PWN.

Washington Court of Appeals

Public Records Act

Collins v. Smith
No. 58509-0-II (8/20/24) (unpublished)

The Washington Court of Appeals held that the City of Port Angeles ("City") did not violate the Public Records Act (PRA) when it filtered a requestor's emails to a single inbox monitored by the public records officer and instructed the requestor to use the City's portal or a specific email address when submitting public records requests. Scott Collins had submitted approximately 150 requests to the City since February 2019. In addition, he regularly emailed City employees, including individual City Council members. In November 2019, the city manager ordered the information technology department to filter all emails from Collins to city employees to an email account monitored by the public records officer and the legal department. The City notified Collins by letter that he could submit future PRA requests by calling a specific

phone number, using the City's PRA portal, or by sending a request to a specific email address. That letter explained to Collins that his behavior toward City staff was regularly inappropriate, and as a result, the City was assigning him a single point of contact for his records requests. The letter instructed Collins to not contact City staff except as arranged through his assigned point of contact. Collins filed a lawsuit against the City in federal court, alleging violation of his free speech rights, which was dismissed. He then filed a lawsuit in superior court, arguing in part that the City had violated the PRA by routing his emails to one email address and by not allowing him to make in-person records requests. The superior court dismissed Collins's lawsuit on summary judgment, and the Court of Appeals affirmed. The Court acknowledged that under RCW 42.56.080(2), agencies are not permitted to "distinguish between persons requesting records," but it held that this prohibition is meant to prevent agencies from denying PRA requests based on the requester's identity or purpose. The Court held that agencies are permitted to choose how they internally process records requests, and nothing in the PRA precludes an agency from internally directing all requests to a designated PRA coordinator. The Court further rejected Collins's claim that the City violated the PRA by directing him to use certain communication channels in submitting requests because the City did not say it would deny access to the records if Collins failed to use those channels. As a result, the Court affirmed dismissal of the lawsuit in its entirety.

Insurance Coverage

Bremerton School District v. Schools Insurance Association of Washington
No. 85811-4-I (8/26/24) (unpublished)

The Washington Court of Appeals held that the attorney fees and cost award owed by the Bremerton School District following Joseph Kennedy's successful appeal in the U.S. Supreme Court were excluded from coverage under the District's insurance policy with Schools Insurance Association of Washington (SIAW). The District declined to renew Kennedy's coaching contract in 2016 after he refused to stop his practice of praying with students on the 50-yard line at the conclusion of football games. Kennedy sued the District, claiming that the District violated his constitutional free speech and free exercise of religion rights. Kennedy sought declaratory and injunctive relief, including reinstatement of his assistant coaching position and religious accommodation to pray with students on the 50-yard line. Kennedy also requested that he be awarded his attorney fees and costs. The U.S. Supreme Court ultimately held that Kennedy was entitled to summary judgment on his free speech and free exercise of religion claims. On remand, the district court entered judgment in favor of Kennedy and ordered that Kennedy, as the prevailing party, was entitled to reasonable attorney fees and costs. In August 2022, the District's insurance carrier, SIAW, notified the District that Kennedy's award for attorney fees and costs was unlikely to be covered under its Memorandum of Coverage (MOC), which excluded coverage for "relief or redress in any form other than monetary damages, or for any fees, costs or expenses" the District may become obligated to pay as a result of adverse judgment or declaratory relief. The District negotiated a settlement with Kennedy for $1,775,000 in owed attorney fees and costs and despite denying coverage, SIAW agreed to pay $300,000 of the total settlement amount. In March 2023, the District sued SIAW in King County Superior Court alleging that SIAW breached its contractual duties under the MOC by denying coverage for the settlement. The District moved for judgment on the pleadings, arguing that the attorney fee and cost award constituted "monetary damages" entitled to coverage, rather than "fees, costs or expenses," which were excluded from coverage under the terms of the MOC. The trial court disagreed with the District and determined that the MOC plainly excluded the attorney fees and cost award, and it entered judgment in favor of SIAW. The Court of Appeals affirmed, holding that the exclusion from coverage of "any fees" in the MOC was broad and plainly excluded the attorney fees and cost award owed to Kennedy. The Court held that there was no reasonable interpretation of the MOC that would require SIAW to cover the attorney fees and cost award, and it affirmed dismissal of the District's lawsuit against SIAW.

PERC

Representation Petition

Renton School District
Decision 13937 (PECB, 2024) (8/12/24)

The Public Employment Relations Commission (PERC) dismissed a representation petition filed by the American Federation of Teachers Washington (AFT), which sought to add 116 unrepresented athletic coaches working for the Renton School District to its existing nonsupervisory classified bargaining unit. The District has six bargaining units, including AFT, which is comprised of 200 classified employees working in the maintenance, transportation, nutrition services, and warehouse departments. Although the employees in these classifications have varied job responsibilities and interactions with students, their collective bargaining agreement (CBA) contains general articles applicable to all employees, including establishing a definite work shift, overtime provisions, holidays, leave, and health insurance eligibility. In contrast, the petitioned-for athletic coaches directly supervise students and are paid a flat stipend for the season regardless of hours worked. Unlike the represented AFT employees, coaches are not eligible for overtime pay (unless they otherwise hold an overtime-eligible position with the District), and they do not accrue vacation leave, paid holidays, or work enough hours to be eligible for health insurance benefits. In September 2023, AFT filed a representation petition seeking to add the coaches to its classified bargaining unit, arguing that the coaches shared a community of interest because coaches ride on buses with their teams, which requires them to work with the bus drivers to manage student incidents. The District objected to the proposed bargaining unit configuration, asserting that the coaches required a standalone unit. Following an evidentiary hearing before PERC, the PERC's Executive Director agreed with the District and dismissed the AFT's petition. The Executive Director acknowledged that the coaches interact with bus drivers while transporting student athletes, but reasoned that the coaches' role in managing student incidents was different because coaches would be required to intervene in a student altercation, while the bus driver would be responsible for pulling the bus over to safety. Additionally, the Executive Director reasoned that many sections of the CBA governing existing employees' working conditions, including those related to overtime pay, vacation accrual, holidays, and leave, would be inapplicable to the coaches, suggesting that the coaches do not share a community of interest with the employees represented by AFT, as necessary to add the coaches to the existing union. As a result, PERC dismissed the representation petition, but it allowed AFT an opportunity to amend its petition and propose a standalone unit of athletic coaches.

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Update Editors

Liz Robertson
elizabeth@pfrwa.com

Jay Schulkin
jay@pfrwa.com

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PORTER FOSTER RORICK LLP
601 Union Street | Suite 800
Seattle, Washington 98101
Tel (206) 622-0203 | Fax (206) 223-2003
www.pfrwa.com