PORTER FOSTER RORICK LLP

October 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

Equal Protection Clause

Doe v. Horne
No. 23-16026 (9/9/24)

The Ninth Circuit Court of Appeals held that Arizona's "Save Women's Sports Act," which prohibits transgender women and girls from participating in women's and girls' sports, likely violates the Equal Protection Clause of the Fourteenth Amendment. In March 2022, Arizona enacted Senate Bill 1165, the Save Women's Sports Act, which prohibits "students of the male sex," including transgender women and girls, from participating in women's and girls' sports. The Act did not restrict participation on any sports teams designated as being for males, men, boys, or coed. Prior to the passage of the Act, transgender women and girls in Arizona were permitted to participate in women's and girls' sports consistent with policies established by the National Collegiate Athletic Association (NCAA), the Arizona Interscholastic Association (AIA), and individual schools. For example, under NCAA policy, transgender female students could participate on girls' sports teams if they met certain standards for documented testosterone levels. The Act abrogated these policies by categorically banning transgender women and girls from participating in women's and girls' sports, applying to students from kindergarten through graduate school, with no exceptions. The Act further created a private cause of action for any student who suffered harm as a result of a school knowingly violating the Act's ban on transgender girls and women participating in girls' and women's sports. In April 2023, Jane Doe, an 11-year-old transgender girl, and Megan Roe, a 15-year-old transgender girl, filed a complaint challenging the Act, alleging that it violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments of 1972 (Title IX). Both Plaintiffs had lived as girls in all aspects of their lives beginning at an early age, and they both alleged that participation in sports had played a prominent role in their lives. Plaintiff Roe had been taking puberty blockers beginning at 11 years of age and received hormone therapy beginning at age 12, and as a result, had not experienced any of the physiological changes associated with male puberty, such as increased testosterone levels. Plaintiffs moved to preliminarily enjoin Arizona from enforcing the Act as applied to them, arguing that they were likely to succeed on the merits of their Equal Protection claim. In July 2023, after considering evidentiary submissions from numerous experts and argument at hearing, the district court granted a preliminary injunction barring

enforcement of the Act. Central to that ruling was the district court's determination that the Act was adopted for the purpose of excluding transgender girls from girls' sports teams, and the evidence that prior to puberty, there were no significant differences in athletic performance between boys and girls. The court further found based on the scientific evidence submitted that transgender girls who receive puberty-blocking medication do not have an athletic advantage over other girls because they do not experience male puberty or experience the physiological changes caused by increased production of testosterone associated with male puberty. The State appealed, arguing that the district court clearly erred in its factual findings regarding the physiological differences between boys and girls prior to puberty, and by finding that transgender girls who receive puberty-blocking medication do not have athletic advantage over other girls. The Ninth Circuit Court of Appeals affirmed the decision of the district court, holding that the district court did not clearly err in making such factual findings based on the record before it. The Court held that the district court's decision was supported by expert reports and studies in the record, and therefore was not clearly erroneous. The Ninth Circuit further held that because the Act was adopted for the discriminatory purpose of excluding transgender women from girls' and women's sports, the State must show that the discriminatory classification in the Act serves an important governmental objective and is substantially related to achieving that objective to survive an Equal Protection challenge. The Court held that Arizona failed to show that the Act's sweeping ban was substantially related to its objective of ensuring equal opportunities for female athletes given the evidence that the AIA had previously approved only seven transgender students to play on teams consistent with their gender identities compared with the 170,000 students playing school sports in Arizona each year. Additionally, the Court noted that during the legislative hearings, proponents of the Act could not identify a single instance where a transgender girl displaced a cisgender girl on a girls' sports team in Arizona. As a result, the Court held that Arizona had not met its burden to show that the sweeping ban was in substantial furtherance of its governmental objective of ensuring fairness in women's sports, and therefore, held that the Act likely violated the Equal Protection Clause. The Court thus affirmed the district court's grant of a preliminary injunction barring enforcement of the Act against Doe and Roe. Because the Court affirmed the injunction on Equal Protection grounds, it did not address the parties' arguments regarding whether Title IX was grounds for an injunction.

Washington Court of Appeals

Meals and Rest Breaks

Androckitis v. Virginia Mason Medical Center
No. 85502-6-I (9/30/24)

The Washington Court of Appeals affirmed a $3.3 million judgment against Virginia Mason Medical Center for its failure to adequately compensate its hourly employees for missed meal and rest breaks. Virginia Mason employs hourly employees, including customer service representatives, surgery schedulers, nurses, and medical assistants, who are entitled under Washington State law to meal and rest periods. Consistent with state law, Virginia Mason maintained policies providing those employees a 30-minute unpaid meal period when they worked a shift lasting at least five hours and a 15-minute paid rest period for every four hours they worked. Virginia Mason's timekeeping system presumed that each employee received their entitled meal and rest periods, and it automatically deducted 30 minutes from their total reported shift time to account for the unpaid meal period. However, the patient workload at Virginia Mason often resulted in employees working through their meal periods, and in those circumstances, the employee would need to proactively cancel the automatic 30-minute deduction from the timekeeping system. Additionally, Virginia Mason did not have a policy allowing employees who missed the 30-minute meal period an opportunity to receive a 30-minute respite later in the shift or provide compensation for the lost opportunity to receive the meal break during their shift. Employees who missed their rest breaks would need to indicate that in the timekeeping system, which would not automatically compensate the employee, but would instead notify the employee's manager, who had to manually approve or

deny the reported missed rest period. Only after approval would the employee be compensated for the missed rest period. Rheannon Androckitis was a Virginia Mason employee entitled to meal and rest breaks, and in 2020, she filed a class action lawsuit against Virginia Mason on behalf of all hourly employees, alleging violations of the Washington State Industrial Welfare Act (IWA), Minimum Wage Act, and Wage Rebate Act. The complaint asserted that Virginia Mason had failed to properly compensate her and the other class members for their hours worked during meal periods and for denying them the respite of a meal period later in the shift. The complaint further alleged that Virginia Mason had failed to properly compensate employees for not having a rest period, and that this failure constituted willful wage violations. In May 2021, Virginia Mason declared that it would be making retroactive payments to all class members (former and current employees) who had recorded a missed rest break and were not previously paid for the missed time. In May 2021, Virginia Mason issued a one-time payment totaling $345,833.44 to current and former employees who had reported not being compensated for working during a rest period. Virginia Mason then filed a summary judgment motion, arguing that it was not liable for paying employees for their hours worked during meal periods, and that its one-time payment for deprivation of rest periods mooted any controversy related to missed rest periods. Plaintiffs also filed a motion for summary judgment, arguing that Virginia Mason owed the class compensation for the deprived 30-minute meal periods as a matter of law, and that Virginia Mason's refusal to provide compensation was a willful violation of the law. Plaintiffs further argued that Virginia Mason's delay in compensating employees for the missed rest breaks was in willful violation of the law, and that Virginia Mason therefore owed the plaintiffs prejudgment interest—payment for the loss of use of the funds owed during the time they were wrongfully withheld—for the compensation associated with the missed rest breaks. The trial court ruled as a matter of law that Virginia Mason owed the plaintiffs 30 minutes of compensation for missed meal breaks in addition to paying the employees for the time worked, and that Virginia Mason willfully violated the rest break laws and owed prejudgment interest for the missed rest breaks. Rather than proceed to a jury trial on damages, the parties reached a stipulated judgment of approximately $3.3 million, plus post judgment interest in damages. Virginia Mason appealed, arguing that plaintiffs were not entitled to compensation for deprivation of the 30-minute meal period and that it had not willfully violated the meal and rest break laws. The Court of Appeals affirmed the trial court's order, holding that the IWA grants employees a remedy for missed 30-minute meal periods in addition to their right to be compensated for hours worked. The Court held that the remedy of 30 minutes owed compensation for the missed meal periods in addition to payment for the hours worked was an appropriate remedy based on the intent of the IWA, which was to protect employees from unhealthy working conditions and to establish a meaningful right for employees to have the respite of a 30-minute meal period. The Court held that because Virginia Mason's timekeeping system had deprived the employees of a meaningful opportunity for a meal period, those employees were entitled to damages equivalent to 30 minutes of wages for the deprivation of that right to a 30-minute meal respite. The Court further held that Virginia Mason's deprivation of employees' rights to meal and rest periods was willful because it was aware that its timekeeping system had resulted in employees being uncompensated for rest breaks and meal periods in which they were required to work, and that Virginia Mason had unreasonably delayed in providing retroactive compensation for the rest breaks after it had learned of the deficiencies in its system. As a result, the Court affirmed judgment in favor of the plaintiffs, including the award of prejudgment interest.

PERC

Duty to Bargain

King County
Decision 13961 (PECB, 2024) (9/23/24)

A PERC examiner held that King County (the "County") committed an unfair labor practice by making a unilateral change to a mandatory subject of bargaining when it changed a position's minimum

certification requirements without providing notice and an opportunity to bargain the changes. King County employs Railway Electrical Workers (REWs) who are responsible for maintaining and repairing the electrical system that powers the Link light rail system. REWs are represented by the International Brotherhood of Electrical Workers, Local 77 (the "union"). REWs perform high-voltage electrical work that can result in death or the loss of limbs, making the position "potentially lethal." When the REW position was created in 2007, the initial job description required REWs to have a Washington State Journey Electrician Certificate or a union-awarded Journey Line Worker Certificate. In 2022, Link system growth and COVID-19-related hiring difficulties led the County to expand the list of certificates that could satisfy the REW minimum certification requirements so that the County could hire enough REWs to meet Link light rail expansion targets. The County then hired new REWs who did not possess the pre-2022 minimum certifications. The union filed an unfair labor practice complaint, alleging that the minimum certification requirements were a mandatory subject of bargaining because robust certification requirements were needed to protect worker safety in a "potentially lethal" position, and that the County unlawfully unilaterally changed the requirements. The County argued that setting a job's minimum qualifications is a fundamental managerial right, that the County needed to soften REW certification requirements to hire sufficient REWs, and that the County's strong safety record for REWs showed that the union's safety concerns were not valid. The PERC Examiner acknowledged that there is PERC case law supporting minimum qualifications being a managerial prerogative, but also noted that in disputes about mandatory versus permissive subjects of bargaining, a case-by-case inquiry to weigh the parties' respective interests is needed. Here, the Examiner held that the union's evidence demonstrating the paramount role of safety through proper training and experience in high-voltage electrical work outweighed the County's interest in staffing up to accommodate Link light rail expansion targets, and therefore, changes to the minimum certification requirements were a mandatory subject of bargaining. As a remedy, the Examiner ordered that the REWs who lacked the pre-2022 certification requirements must be removed from those positions until they meet the requirements or the County meets its bargaining obligations.

Welcome New PFR Attorney

The attorneys and staff of Porter Foster Rorick are pleased to welcome Collin Burns to our team of attorneys providing responsive and practical legal advice to Washington public schools.

Collin Burns

Collin Burns advises and defends public school districts across a broad spectrum of legal issues.

Collin is a 2020 magna cum laude graduate of the University of Washington and a 2024 graduate of the University of Washington School of Law. During law school, Collin served as an Articles Editor for the Washington Journal of Social and Environmental Justice, and externed with both the King County Prosecutor's Office and Division II of the Court of Appeals. Prior to joining PFR in 2024, Collin worked as a summer associate for a private law firm in Spokane.

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October Masthead Photo Credit

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