PORTER FOSTER RORICK LLP

November 2024

Washington School Law Update

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

Washington Court of Appeals

Public Records Act

C.S.A. v. Bellevue School District No. 405
No. 85728-2-I (10/14/24)

The Washington Court of Appeals held that the Bellevue School District ("District") violated the Public Records Act (PRA) by not diligently responding to a requestor's public records requests and by misapplying FERPA to justify the withholding of videos depicting multiple students. Student C.S.A. was accused of relationship violence by a fellow student. On November 19, 2021, students organized a large protest which involved naming C.S.A. as an abuser. C.S.A later made complaints of harassment, intimidation, and bullying (HIB) alleging that he was the victim of HIB related to incidents on March 28, 2022, and April 25, 2022, in which he was bullied for being an alleged abuser. On December 20, 2021, March 29-30, 2022, and May 19, 2022, respectively, C.S.A. submitted public records requests related to the protest and each HIB incident. The requests sought video of the incidents, among other things. The District asserted that FERPA prohibited it from producing copies of the requested videos, but allowed C.S.A. to inspect the videos in-person. In response to the December 20, 2021 request, the District did not produce copies of the requested videos until producing redacted and "useless" blurred footage of the videos in December 2022, one year later, with redactions made pursuant to FERPA. Over that year, the District did not communicate with C.S.A. about why it delayed production of the videos. In response to the March 29-30, 2022 requests, the District produced multiple installments of records before producing four videos on May 19, 2023, more than one year later. Two of the videos were redacted under FERPA. The District explained that the slow pace of disclosure was due to receiving an unprecedented number of public records requests and being short staffed. In response to the May 19, 2022 request, the District disclosed that three responsive videos existed, but withheld them under FERPA. C.S.A. sued the District, alleging that the District violated the PRA by not diligently responding to the requests for videos and that FERPA did not exempt the videos. The trial court dismissed the PRA claims, and C.S.A. appealed. The Court of Appeals first addressed FERPA's applicability to videos showing multiple students, adopting guidance from the U.S. Department of Education (DOE) on its *FAQs on Photos and Videos under FERPA* webpage and in the DOE's 2017 *Letter to Wachter*. The Court noted that under the DOE guidance, a parent or eligible student is entitled to view a video that is directly related to the student and is maintained by a school district. If the

video also contains information directly related to another student, the requesting student is entitled to view the information of the other student "if the [other student's] information cannot be segregated and redacted without destroying [the record's] meaning." Applying these principles to the videos in question, the Court held that C.S.A. should have been provided copies of the videos upon request, even though they also contained the personally identifiable information of other students, because the videos were directly related to C.S.A. and the District conceded that redactions "destroyed the meaning" of the videos. Next, the Court held that the District violated the PRA because of the District's lengthy delay in producing the requested videos. In reaching this conclusion, the Court looked to the approximately one year the District took to produce the March 28, 2022 and April 25, 2022 videos, and held that the District's justification for delay (i.e., the unprecedented number of requests and staff shortages) did not excuse the delay and that the District did not use due diligence in responding. As a result, the Court reversed and remanded for the trial court to determine daily penalties, costs, and attorney fees.

Public Records Act

Gronquist v. Washington State Department of Corrections
No. 58808-1-II (10/15/24)

The Court of Appeals held that the Washington State Department of Corrections (DOC) violated the Public Records Act (PRA) by providing an untimely response to a public records request and by performing an inadequate search. On October 3, 2020, DOC inmate Derek Gronquist submitted a request to DOC seeking invoices for payments to contract attorneys who provide legal services for inmates. DOC provided an estimated response date of December 30, 2020. The first documented DOC activity on the request was December 21, 2020, when DOC assigned the request to the department that held the records in question. There is no record of any activity between then and December 30, when DOC extended the estimated response date to February 11, 2021, explaining that additional time was needed due to "COVID-19 staffing and remote work." There was then no record of any activity until February 11, when DOC extended the estimated response date to March 26. At that point, there was evidence that DOC took actions to search for records. DOC notified Gronquist that records were ready on March 24. DOC produced only some of the responsive records and communicated to Gronquist that the request had been closed. Gronquist then filed a lawsuit, and the trial court held that DOC's delays were unreasonable, and its production was incomplete. On appeal, the Court of Appeals held that DOC violated the PRA by performing an inadequate search and not timely responding to the request. DOC first argued that the trial court erred by failing to address the adequacy of its search, asserting that a finding of adequacy would preclude a PRA violation. The Court rejected that argument, holding that an agency can violate the PRA by an inadequate search or by failing to timely respond, so the trial court did not err in finding a PRA violation without considering search adequacy. The Court further held that DOC's search could not be determined adequate because DOC, which had the burden of proof, failed to provide sufficient evidence that its search was adequate. Next, the Court held that DOC's response was untimely. The Court noted that it is appropriate to extend an estimated deadline when circumstances change, but that there was no evidence of any changed circumstance in the four months between receipt of the request on October 3, 2020, and the second extension in February 2021. For example, DOC had not begun a search and realized that the request was more complex than originally believed. Instead, DOC took no documented steps to fulfill the request until four months had passed. DOC argued that the lack of documentation during those four months did not mean that there was no actual activity on the request, but the Court held that DOC had the burden to demonstrate it provided a reasonably timely response, and DOC did not provide evidence of the request actually being worked on before February 2021. As a result, the Court affirmed that DOC violated the PRA. Finally, the Court acknowledged in a footnote that a failure to produce responsive records is not automatically considered "silent withholding," which occurs when an agency fails to produce a record it knows exist. Thus, while the Court concluded that the DOC's search was inadequate, it clarified it was not

finding that the DOC engaged in "silent withholding" in this case.

PERC

Interference

Benton County
Decision 13977 (PECB, 2024) (10/25/24)

A PERC Examiner held that Benton County committed an interference unfair labor practice (ULP) when it assisted the Benton County Sheriff's Office Support Staff Guild ("Guild") in obtaining documents to support its petition to sever positions from the existing bargaining unit represented by Teamsters Local 839 ("Teamsters"). In 2023, the Guild filed a representation petition with the Public Employment Relations Commission (PERC), seeking to sever the record clerk positions from the existing Teamsters bargaining unit and add them to the Guild. Teamsters objected to the petition, and the matter proceeded to a representation hearing before PERC. In that earlier hearing, PERC ultimately determined that severance was not appropriate. During the representation hearing, a lieutenant represented by the Guild testified that he had made copies of the record clerk job descriptions and provided them to the Guild's attorney on a thumb drive. The lieutenant also testified that he had provided a copy of the County's policies to the Guild's attorney to assist the Guild in preparing for the hearing. The Guild did not submit a public records request seeking the documents, nor did it pay any fees that would typically be associated with the County's response to a public records request. Following the representation hearing, Teamsters filed a ULP complaint with PERC alleging that the County had unlawfully assisted the Guild in its representation petition by providing the documents outside of normal channels. Following an evidentiary hearing, the Examiner held that the County's actions related to the records violated RCW 41.56.140(2), which prohibits an employer from controlling, dominating, or interfering with a bargaining representative. The Examiner held that while the representation petition was pending, the County was required to maintain the status quo, including continuing to recognize Teamsters as the incumbent bargaining representative for the record clerks. Because the severance petition had not yet been decided, Teamsters, not the Guild, was still the exclusive bargaining representative for the records clerks. As a result, the Examiner held that the County had unlawfully assisted the Guild in its representation petition by treating the Guild more favorably than third parties requesting records, to the detriment of Teamsters (the incumbent bargaining unit). However, the Examiner also acknowledged that the Guild had not prevailed in its representation petition, and therefore, the status quo had already been restored with the record clerk positions remaining in the Teamsters bargaining unit.

OSPI Regulations

Student Discipline

Chapter 392-400 WAC; WSR 24-20-021

On September 20, 2024, OSPI issued a second round of emergency rules regarding student discipline, following up on its earlier August 19, 2024, emergency rules. The September 20 rule changes cover four main topics. First, the September 20 rules removed the requirements that schools "attempt other forms of discipline" before imposing a short-term suspension and "consider other forms of discipline" before imposing a long-term suspension or expulsion. Similarly, student discipline letters no longer need to state the other forms of discipline that were attempted or considered before imposition of the suspension or expulsion. Second, the September 20 rules filled a gap in the August 19 rules, reinstating the requirement that teachers attempt one or more alternative forms of corrective action before imposing a classroom exclusion, except in emergency circumstances. (RCW 28A.600.020 maintained that requirement even when the August 19 rules removed it, but the September 20 rules appropriately reintroduced that requirement into the student discipline regulations.) Third, the September 20 rules removed the qualification that a removal was not considered a classroom exclusion if, among other things, the removal was for a "brief duration." The duration of the removal is no longer a relevant consideration in determining whether a

removal is a classroom exclusion. Fourth, the September 20 rules introduced a definition of "corrective action" as "disciplinary and nondisciplinary actions taken by a certificated educator. Nondisciplinary actions include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations." Note that the statutes referenced in that definition contain employee training and evaluation requirements, and do not outline evidence-based interventions and supports for students.

Records Retention

CORE Records Retention Schedule

Version 5.0 (Oct. 22, 2024)

Two schedules determine records retention requirements for Washington school districts. The first is specific to school districts and has not changed. The second is the Local Government Common Records Retention Schedule (CORE), which applies to all local government agencies, including school districts. The CORE Records Retention Schedule was recently amended for the first time since 2021, and contains 32 new records series, 37 changes to the retention period of existing records series, and 147 minor clarifications to existing records series. A new item of particular interest is that all of an agency's records regarding an external audit (apart from records of the final outcome of audits) may be destroyed upon the conclusion of the audit. A number of records series have also been reorganized or renamed. The archival designations for 12 records series have been changed, and 20 archival and 50 non-archival records series have been revoked. A detailed summary of these changes can be found at the Washington State Archives website. School districts should be sure to use this newest version of the CORE Records Retention Schedule when considering records retention issues.

PFR Announcements

2025 Bargaining Skills Workshops

January 27-28 and February 3-4

Porter Foster Rorick is once again partnering with the Washington School Personnel Association (WSPA) to present our popular workshops on collective bargaining skills. The workshops include a primer on the legal rules for collective bargaining, but also focus on the negotiating skills which help bargaining teams find agreements with public school unions. These skills are important for all members of a management bargaining team, particularly as we head into another challenging year for collective bargaining in 2025. The courses are taught by nine PFR attorneys who regularly represent school districts at bargaining tables with certificated and classified employee unions in Washington State and collectively have negotiated settlements for more than 800 open labor contracts over the past 30 years.

The Bargaining Skills 101 curriculum will be offered on Monday, January 27, and Monday, February 3. The Bargaining Skills 201 curriculum will be offered on Tuesday, January 28, and Tuesday, February 4. Attendees can choose to come to either or both Bargaining Skills 101 and Bargaining Skills 201. The workshops will be held at the Two Union Square Conference Center in downtown Seattle with each section limited to 40 participants to facilitate small group activities and personal interaction with the instructors.

Register to attend by sending an email to info@pfrwa.com with the name and email address for each attendee, the date(s) you wish to attend, and a purchase order number for invoicing your school district. The cost is $295 per day for WSPA members and $395 per day for non-members, with a $400 daily discount for districts who send a team of four or more. More information is available on our website or by contacting us at (206) 622-0203 or info@pfrwa.com.

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