PORTER FOSTER RORICK LLP

March 2025

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

Student Discipline

K.J. v. San Diego Unified School District
No. 23-3052 (2/11/25)

The Ninth Circuit Court of Appeals held that a California school district violated a student's constitutional due process rights when it extended his suspension based on new evidence of misconduct without giving the student an opportunity to be heard on the new charges and evidence against him. On February 4, 2022, multiple high school students were involved in a lunchtime fight, and each were asked to submit a written statement about the incident. After building administration met with each student involved, they suspended each student for "fighting at school." K.J. was one of the students involved in the fight, and he was suspended for three days. After the building sent K.J. home from school, the vice principal watched surveillance videos of the end of the fight and learned that one of the students had suffered injuries. Based on the footage, the vice principal concluded that K.J. had not only participated in the fight, but also "willfully caused serious injury" to another student not in self-defense. Based on that new information, the vice principal contacted K.J.'s parents the night before his suspension was set to end, and he informed the family that K.J.'s suspension had been extended and that the building recommended he be expelled from school. The next day, K.J.'s parents met with the school district's appeal department to discuss the expulsion process and their rights, but they were not allowed to present any defense to the factual allegations underlying the suspension extension and recommended expulsion. K.J.'s parents filed a lawsuit in federal court challenging the extended suspension. After the family filed a lawsuit, the district allowed K.J. to return to school, resulting in him being removed from school for a total of 16 days. After the district allowed K.J. to return to school, the family filed another lawsuit in federal court, naming the district superintendent and the building vice principal in their individual capacities, alleging that they had violated K.J.'s procedural due process rights under the Due Process Clause of the Fourteenth Amendment. The district court agreed with the family that the defendants had violated K.J.'s due process rights, but it also held that the individual defendants named in the lawsuit were entitled to qualified immunity because the law was not clearly established as to whether students are entitled to due process when their suspension is extended. The district court also held that K.J. could not seek expungement of his disciplinary record in his student file as a remedy because his belief that it would harm his reputation was speculative. The Ninth

Circuit agreed with the district court that the defendants had violated K.J.'s due process rights by extending his expulsion based upon new evidence. However, the Ninth Circuit also held that the individual defendants were not entitled to qualified immunity because K.J.'s constitutional right was clearly established under the 1975 U.S. Supreme Court opinion *Goss v. Lopez*, in which the Court held that the minimal due process rights of a student facing suspension include written notice of the charges, an explanation of the evidence, and an opportunity to present the student's side of the story. The Court held that the protections of *Goss* clearly applied to K.J.'s extended suspension and expulsion recommendation given that the new discipline was based upon new allegations of different conduct learned from the video footage. Because the vice principal did not give K.J. notice of the charges or an opportunity to present his side of the story before deciding to extend the suspension and recommend expulsion, the Court held that the defendants had violated a clearly established constitutional right and were not entitled to qualified immunity. The Court further held that K.J. had standing to seek the injunctive relief of expungement of the disciplinary records from his files, given the potential reputational harm associated with other administrators, counselors, and teachers viewing those records as part of his discipline file.

Washington Supreme Court

Public Records Act

John Does v. Seattle Police Department
No. 102182-8 (2/13/25)

The Washington Supreme Court held that police officers who participated in the January 6, 2021, rally and riot in Washington D.C. did not have a protected statutory or constitutional privacy right to prevent disclosure of their identities in response to a public records request. Shortly after the events of January 6, 2021, the Seattle Police Department (SPD) investigated reports that six of its officers had participated in Donald J. Trump's rally on the National Mall, in which Trump reiterated claims that the 2020 election was stolen and encouraged attendees to march to the Capitol building and confront Congress. Thousands of demonstrators marched to the Capitol grounds, and a group of demonstrators breached the Capitol building, which law enforcement later declared a "riot." SPD learned that two of its officers posted photographs of themselves at the demonstration on Facebook, which prompted SPD to investigate those officers' actions on January 6th. Four additional SPD officers later self-reported that they had also attended portions of the demonstration, and SPD investigated the involvement of all six officers. In January and February 2021, SPD received several requests for public records related to any SPD officers' involvement in the events of January 6th. SPD notified the six officers that it intended to release the investigative documents unredacted in response to the request, prompting those officers to file a lawsuit in superior court to prevent such release. The officers argued that an injunction barring release should be granted because their identities constituted exempt "private personal information" under the Public Records Act (PRA), and that disclosure of their names would also violate their constitutional right of private political association under the First Amendment to the U.S. Constitution. For the same reasons, the officers sought to proceed in the litigation under pseudonyms of Jane and John Does 1-6. The trial court denied the officers' request for a preliminary injunction, which the officers appealed. While the appeal was pending, SPD concluded its investigation and publicly released its case summary, which did not identify officers by name, but reported that all six officers attended the rally, and two of the officers trespassed on the grounds of the U.S. Capitol. Following the conclusion of the investigation, the officers filed a second motion for preliminary injunction in superior court, again seeking to protect their identities from disclosure. The trial court again denied the injunction, but it allowed the officers to continue under pseudonym while the litigation was pending. The officers appealed, and the Court of Appeals reversed, holding that the officers had a First Amendment right to anonymity in political belief or association, and thus their identities could not be disclosed in response to a public records request. The Washington Supreme Court reversed and reinstated the order of the trial court. The Court first

held that even when a PRA injunction plaintiff argues that a constitutional right justifies the exemption of information, the normal two-part PRA injunction standard must be met for an injunction to issue. Next, the Court held that the PRA's employee privacy exemption contained in RCW 42.56.230(3) did not protect the officers' identities given the highly public nature of the January 6th rally, which 45,000 people attended and which was documented by nationwide news media. The Court also held that the constitutional right to privacy emanating from the First Amendment did not create an exemption from disclosure, given that the officers took no measures to attend the rally anonymously or to exercise their political beliefs in private. As a result, the Court held that the officers had not met the standard to obtain an injunction preventing disclosure of their identities. Finally, for similar reasons, the Court held that the officers did not satisfy their burden to litigate anonymously, and it reversed the trial court's order permitting pseudonyms.

Washington Court of Appeals

Insurance Coverage

Lundquist v. Seattle School District No. 1
No. 85589-1-I (2/10/25) (unpublished)

The Washington Court of Appeals reversed dismissal of a teacher's insurance coverage lawsuit, holding that there was a disputed issue of material fact as to whether the district's group disability insurance policy included time, responsibility, and incentive (TRI) pay, or employer benefit contributions. Timothy Lundquist worked as a middle school teacher for the Seattle School District (District) from 1999 until March 2017, when he could no longer work due to Parkinson's disease. Standard Insurance Company (Standard) had issued a group disability policy to the District beginning in 1983, which had been renewed each year until 2020, and which defined "insured earnings" as the "annual rate of earnings from your employer, including deferred compensation, but excluding bonuses, overtime pay, and any other extra compensation." Lundquist applied for long term disability compensation through Standard, and Standard began paying Lundquist benefits in May 2017. Shortly thereafter, Standard notified Lundquist that it had incorrectly included TRI as part of his benefit calculation, and therefore, had overpaid him. Lundquist challenged this determination, and following internal review, Standard concluded that Lundquist's insured earnings did not include TRI. Lundquist filed a lawsuit against the District, arguing that it had failed to report earnings and pay premiums insuring the TRI payment portion of his salary. Lundquist later amended his complaint to add claims against Standard, and alleged that the existing policy included TRI payments and employer contributions for deferred compensation and for health insurance. The trial court dismissed Lundquist's lawsuit on summary judgment, ruling that TRI pay was not covered by the policy as a matter of law. Lundquist appealed, and the Court of Appeals reversed, holding that Lundquist had presented sufficient evidence to create a disputed issue of material fact as to whether the policy covered TRI pay and employer contributions to retirement or health benefits. The Court held that Lundquist had presented multiple pieces of evidence challenging Standard's assertion that the policy excluded such coverage, including documents the District had provided to employees describing the disability policy consistent with Lundquist's interpretation, testimony of a school financing expert explaining that TRI pay is part of a teacher's base salary, and the collective bargaining agreement, which supported the argument that TRI was part of Lundquist's annual salary. The Court reversed summary judgment dismissal of Lundquist's lawsuit, and it remanded to the trial court for further proceedings.

Public Records Act

Pilloud v. Employment Security Department
No. 59149-9-II (2/11/25) (unpublished)

The Washington Court of Appeals held that the Employment Security Department (ESD) was reasonably diligent in responding to a public records request for the names and residential addresses of all individuals who applied for an exemption from the Washington Long-Term Services and Supports Trust

Program ("WA Cares Fund"). On April 19, 2022, Andrew Pilloud submitted a records request via email to the ESD, seeking an "export of the WA Cares Exemption Database," including the name, phone number, email address, residential address, and application status of those who had applied for an exemption from the WA Cares Fund premium collection. The ESD's cybersecurity software initially filtered Pilloud's email into a junk email folder, and after not hearing back from the ESD, Pilloud sent another email and a physical letter to the ESD with his request on May 3, 2022. The ESD acknowledged receipt of Pilloud's request on May 6, 2022, and it estimated that it would produce responsive records by May 27, 2022. ESD later extended that estimate to June 22, in part because the information requested was not stored in a singular database. ESD created custom code to extract the data Pilloud requested from several different databases within its systems. The ESD compiled a database with approximately 480,000 individuals' exemption status information, but it also redacted the name, phone number, email address, city, state, and zip code of applicants, citing RCW 50B.04.170, the confidentiality provision of the WA Cares Fund. Pilloud filed a lawsuit, alleging that the ESD had violated the Public Records Act (PRA) by redacting the information in the database, and also by not responding diligently to his request. The trial court ruled in part that the ESD had responded within five business days from when they had fair notice of Pilloud's records request, and also that the ESD had properly redacted the information under the confidentiality provision in the WA Cares Fund. The Court of Appeals affirmed, holding that the confidentiality provision of the WA Cares Fund—which treats an individual's information collected for the purpose of assessing employee premiums as confidential—was an "other statute" under RCW 42.56.070 exempting disclosure of that information under the PRA. The Court further held that the ESD had acted diligently in producing the requested records within seven weeks, reasoning that the ESD took steps to create a record responsive to Pilloud's request by compiling information from multiple databases that were partially responsive, and that the ESD was not required to also disclose the partially responsive underlying databases.

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The **Washington School Law Update** is published by Porter Foster Rorick LLP on or about the 5th of each month. To be added to or removed from our distribution list, simply send a request with your name, organization, and e-mail address to info@pfrwa.com.

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