PORTER FOSTER RORICK LLP

May 2025

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

Soule v. Washington
No. 59172-3-II (4/1/25) (unpublished)

The Washington Court of Appeals affirmed dismissal of a public records lawsuit filed against the Washington State Attorney General's Office (AGO), holding that the agency promptly responded to the request and conducted an adequate search. In January 2020, Sheldon Soule submitted a Public Records Act (PRA) request to the AGO, seeking records related to settlements between Wells Fargo Bank and the State of Washington. The request specifically sought all communications between Wells Fargo representatives and certain employees within the AGO, as well as employee evaluations and reports. The AGO responded within five business days, and it notified Soule it would be providing records in installments given the number of potentially responsive records. The AGO reached out to all employees within the relevant AGO division who might have responsive records, and those employees searched their physical files, electronic files, e-mail databases, human resources records, and the consumer complaint database for records responsive to Soule's request. The AGO released more than 30,000 pages of records in 17 installments over two years, and it then closed the request. In May 2023, Soule filed a PRA lawsuit in superior court alleging that the AGO had failed to promptly and adequately search for records responsive to his request. The AGO filed an opening brief with several supporting employee declarations, which established that the employees had searched the AGO's centralized e-mail database using "very broad" search terms, as well as the consumer complaint database, AGO Outlook accounts, e-mails, and e-mail attachments. Well after the discovery deadline set by the superior court had passed, Soule attempted to depose the AGO employees who submitted declarations and as a result, the superior court quashed his motion to depose or cross-examine them in-person. Relying on the employees' affidavits, the superior court then ruled that the AGO had met its burden of showing it conducted an adequate and reasonable search under the PRA. The court also ruled that the AGO's production timeline of two years was reasonable given the volume of documents sought, and it dismissed Soule's lawsuit. The Court of Appeals affirmed, first rejecting Soule's argument that he was entitled to depose the AGO employees, holding that the superior court had adequate grounds to deny Soule's untimely discovery requests and that the PRA specifically allows for claims to be resolved solely on supporting affidavits. The Court then rejected Soule's

claim that AGO's timeline for providing records was unreasonable, holding that the employee declarations clearly supported the need for such timeline given the locations to be searched and number of documents disclosed. Finally, the Court rejected Soule's argument that PRA claims could not be resolved on employee declarations alone, holding that an agency may rely on declarations made in good faith that include the type of search performed, search terms used, and the places likely to contain responsive materials. The Court held that Soule's argument that the AGO declarations were "deceptive" and "self-serving" was not sufficient to show the agency conducted an inadequate search, and it affirmed dismissal of his PRA lawsuit in its entirety.

Washington Law Against Discrimination

Bogardus v. City of Yakima
No. 40060-3-III (4/3/25) (unpublished)

The Washington Court of Appeals affirmed dismissal of a transit operator's discrimination and wrongful termination lawsuit against the City of Yakima, holding that the employee failed to show she was qualified to perform the essential functions of her position. Kimberly Bogardus was hired as a transit operator for the City in 2003. Beginning in 2016, Bogardus began to experience migraine headaches for which she sought leave under the Family Medical Leave Act (FMLA). Bogardus exhausted her annual allotment of FMLA leave between 2016 and 2020, at which point she did not request additional unpaid leave, and repeatedly did not report to work. The City disciplined Bogardus for being absent without approved leave, and at one point, it offered Bogardus an "extra board" position, which would not place her on the driving schedule, but instead allow her the flexibility to pick up certain shifts when there is availability, which Bogardus declined. When the Washington State Paid Family and Medical Leave Act (PFMLA) took effect in 2020, Bogardus applied for and was approved for PFMLA benefits for the 2020 calendar year. Bogardus exhausted her PFMLA leave in July 2020, at which point the City met with her to discuss options, including accommodations that would allow her to perform the essential functions of her job. The City also reminded Bogardus of its leave without pay policy, which she had previously been disciplined for violating. After depleting her leave, Bogardus failed to report to work on August 4 and 5, and the City terminated her employment on August 27. Following her termination, the City learned that Bogardus had applied for full and permanent disability benefits with the Social Security Administration (SSA) four months earlier, stating on the application that she had stopped working in April 2020 and was "unable to work." Bogardus filed a wrongful termination and disability discrimination lawsuit against the City, alleging in part that it had violated the Washington Law Against Discrimination (WLAD) by terminating her based on her disability. The superior court dismissed Bogardus's lawsuit on summary judgment. The Court of Appeals affirmed, reasoning that an essential element of a WLAD claim is that the employee was qualified to perform the essential functions of the job, which Bogardus could not prove given that she had written on her SSA application she was not able to work. Applying the doctrine of judicial estoppel, the Court held that Bogardus was precluded from asserting one position in her SSA application regarding her ability to work and then taking a clearly inconsistent position in the WLAD lawsuit. The Court further held that Bogardus failed to present a material issue of fact that she was wrongfully terminated in violation of public policy given that the City's reasons for terminating her were based upon her being absent without available leave, not because she previously took FMLA or PFMLA leave. As a result, the Court affirmed dismissal of Bogardus's lawsuit in its entirety.

Open Public Meetings Act

West v. Walla Walla City Council
No. 87208-7-I (4/21/25)

The Washington Court of Appeals held that the Walla Walla City Council (WWCC) violated the Open Public Meetings Act (OPMA) by taking final action on a matter not specified in a special meeting notice and by taking final action in executive session. On November 16, 2022, the WWCC gave public notice that it would hold a special meeting to conduct an executive session to evaluate the qualifications of applicants for public employment, followed by an open session to vote to

select finalists for the city manager position. When the WWCC emerged from the executive session, the mayor announced that the WWCC "is unanimously of the opinion" that one of the city manager finalists was superior and that the WWCC had thus decided to postpone other interviews and notify the superior candidate of the WWCC's decision to negotiate with them over terms of employment. The WWCC then unanimously approved a motion to "move forward with negotiations and offer of employment" for the preferred candidate. At a subsequent meeting, the WWCC voted to reconsider the action taken at the earlier meeting and also discussed whether to offer the job to the preferred candidate or continue with the selection process. They then voted to end the selection process and hire the preferred candidate as city manager. On February 24, 2023, Arthur West sued the WWCC alleging they had violated the OPMA, and sought declaratory and injunctive relief, civil penalties, and costs. The WWCC moved to dismiss, and West moved for summary judgment seeking a declaration that the WWCC had violated the OPMA by taking final action at a special meeting on a matter not specified in the meeting notice. The trial court granted summary judgment for the WWCC, ruling that the complaint was barred by laches and that the claim for injunctive relief was moot. The trial court further ruled that the WWCC had not violated the OPMA. West appealed. The Court of Appeals first held that laches did not apply because West had filed the lawsuit only two months after the city manager was hired and well within the OPMA's two-year statute of limitations. The Court then affirmed the decision that the claim for injunctive relief was moot because West could not show a well-grounded fear that the Council would violate the OPMA again because it had taken steps to address the OPMA concerns after the initial special meeting. Finally, the Court held that the WWCC had violated the OPMA, reversing the trial court. The Court rejected the WWCC's arguments that Council members cannot be penalized for improper actions taken at a lawfully called meeting. As a result, the Court reversed and remanded.

Minimum Wage Act

McClain v. State of Washington
No. 59818-3-II (4/22/25)

The Washington Court of Appeals held that a lawsuit brought by three Washington State Patrol (WSP) troopers against the WSP for violations of the Minimum Wage Act (MWA) were not precluded by the collective bargaining agreement (CBA) between the employees' union and WSP. Some WSP troopers (including the plaintiffs) are personally assigned patrol vehicles, such that they may park the vehicles at their home and use them to commute. The CBA between WSP and the Washington State Patrol Troopers Association addresses commute pay and other related matters for troopers with personally assigned patrol vehicles. Three troopers sued WSP alleging that its commute pay policies violated the MWA. WSP obtained dismissal of the case at the trial court level, where the court concluded that the claims were contractual in nature, not statutory, and thus the plaintiffs were required to exhaust the CBA's grievance procedures. The plaintiffs appealed, and the Court of Appeals reversed. The Court held that the MWA sets a floor of statutory guarantees for workers, and parties cannot negotiate relinquishment of those rights. As a result, plaintiffs' claim premised on alleged violations of the MWA was independent of the terms of the CBA, thus the CBA's grievance procedures could not limit the plaintiffs' ability to bring their claim in superior court. In reaching this result, the Court held that the supremacy clause of the Public Employee Collective Bargaining Act (PECBA), which provides that the provisions of PECBA prevail over any conflicting statute, does not supersede the MWA with respect to the floor of minimum wage rights.

Open Public Meetings Act

McFarland v. Tompkins
No. 40158-8-III (4/24/25)

The Washington Court of Appeals held that an individual had standing to sue to nullify an action taken in violation of the OPMA, that laches did not bar the suit, and that in light of circumstantial evidence offered by the plaintiff, elected officials' conclusory

declarations that they did not knowingly violate the OPMA were insufficient for the defendants to prevail on summary judgment on that issue. R.L. McFarland sued Walla Walla County and individual County Commission members for violating the OPMA. In January 2021, the Walla Walla Board of Commissioners (WWBOC) agreed to send a letter objecting to Governor Inslee's measures in response to the COVID-19 pandemic. McFarland believed that the WWBOC's action was done in a manner that violated the OPMA, and beginning ten months later, his attorney corresponded at length with an attorney for the County about the allegation. That correspondence continued throughout 2022, including a threat to sue, and McFarland ultimately sued in September 2022, seeking nullification of the letter and civil penalties. The trial court concluded that the WWBOC violated the OPMA; that McFarland lacked standing to pursue nullification of the letter; that although McFarland had standing to sue for a civil penalty for the OPMA violation, he had presented no evidence the Commissioners knowingly violated the OPMA, a prerequisite for penalties; and that laches barred the lawsuit because McFarland unreasonably delayed suing. McFarland appealed the trial court's decisions against him, and the County did not appeal the decision that the WWBOC violated the OPMA. The Court of Appeals first held that McFarland had standing to pursue nullification of the letter, reasoning that because the OPMA states that actions taken in violation of the OPMA are null and void, a cause of action for nullification must exist even though the OPMA does not expressly state who may sue for nullification. Next, the Court reversed the trial court's ruling that the lawsuit was barred by laches. The Court concluded that McFarland's delay of nearly two years in filing the lawsuit did not prejudice the defendants—a prerequisite for laches—because McFarland's attorney continuously advised the County of the OPMA violation over many months, and because it was not too late for the OPMA violation to be remedied. Finally, the Court reversed the trial court's summary judgment dismissal of McFarland's request for civil penalties. Although the individual Commissioners had submitted declarations stating that they did not knowingly violate the OPMA, because they were "conclusory [and] self-serving" and because McFarland had presented circumstantial evidence of the Commissioner's knowledge, McFarland had raised a genuine issue of material fact as to whether their OPMA violation was knowing, so the Court remanded for trial on that issue.

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