PORTER FOSTER RORICK LLP

July 2025

Washington School Law Update

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

United States Supreme Court

Religious Exercise

Mahmoud v. Taylor
No. 24-297 (6/27/25)

The U.S. Supreme Court held that a school district's refusal to allow parents to "opt out" of LGBTQ+-inclusive storybooks in its elementary school curriculum unconstitutionally burdened the parents' right to direct the religious upbringing of their children. Leading up to the 2022-23 school year, the Board of Education of Montgomery County, Maryland (Board) determined that the books used in its existing English and Language Arts curriculum did not represent many students and families in the community. As a result, the Board decided to introduce certain storybooks in its elementary curriculum that were LGBTQ+-inclusive. The books at issue contained characters from different backgrounds, including adults who were in in same-sex relationships, as well as children who questioned their gender identity. The Board recommended that teachers incorporate the storybooks in the same way that other books are used as part of the curriculum—placing them on shelves for students to find on their own, recommending the books to students who would enjoy them, offering the books as an option for paired reading groups, or reading them out loud in the classroom. Shortly after the books were introduced, some parents contacted the school district and asked that their children be excused from any classroom instruction related to the storybooks, citing their deeply held religious beliefs concerning sexuality, marriage, and gender. The Board declined to grant any opt out requests, stating that it would significantly disrupt the classroom environment and would expose students who are LGBTQ+ to social stigma and isolation. A group of religious parents filed a lawsuit in federal court, arguing that the Board's refusal to allow them to opt their children out of exposure to the storybooks substantially burdened their religious beliefs, and therefore, violated the Free Exercise Clause of the First Amendment to the U.S. Constitution. Specifically, the parents asserted that because the storybooks depicted same-sex marriage and gender-nonconforming characters in a positive light, they were being used to impose an ideological view of family life and sexuality at odds with the parents' religious beliefs, and which characterized their religious beliefs as hurtful. The parents sought a preliminary injunction requiring the Board to allow them to opt their children out of any instruction that incorporated the storybooks. The district court denied the requested relief, and the Fourth Circuit affirmed, holding that the parents were unlikely to show that the Board's policies substantially burdened their religious

exercise. The U.S. Supreme Court granted review and reversed, holding that the parents were entitled to a preliminary injunction because the Board's refusal to allow parents to opt out of instruction related to the storybooks unconstitutionally burdened their right to direct the religious upbringing of their children. Relying primarily on the Court's 1972 decision in *Wisconsin v. Yoder*—a case in which the Court held that Amish parents had a constitutional right to opt their children out of attending school altogether based upon their religious beliefs—the Court held that when a law imposes a burden on parents' free exercise of religion, the law must be analyzed under the most demanding review—strict scrutiny—regardless of whether that law is neutral or generally applicable. Applying that standard, the Court assessed whether the Board's policy forbidding opt out: (1) advanced interests of the highest order; and (2) was narrowly tailored to achieve those interests. The Court held that the Board failed to meet this test, reasoning that the Board already allowed parents to opt out of the "Family Life and Human Sexuality" unit of instruction, and therefore it could not show that allowing opt out here would create any other disruption. The Court further dismissed the Board's claims that allowing children to leave the classroom when the storybooks were incorporated in curriculum would isolate and stigmatize LGBTQ+ students, reasoning that not granting the opt out isolated and stigmatized religious students and their families who hold "traditional" views on marriage, gender, and family. As a result, the Court ordered the injunction be granted, and that until appellate review is completed, the Board be required to notify parents in advance whenever one of the books in question (or a similar book) is to be used in the classroom, providing them an opportunity to opt their children out of such instruction. Justice Sotomayor authored a dissent in which Justice Kagan and Justice Jackson joined, criticizing the majority for creating a constitutional right for parents to avoid exposure to "subtle" themes contrary to their religious practices, which effectively provides a subset of parents the right to veto curricular choices that have historically been left to locally elected school boards.

Ninth Circuit Court of Appeals

First Amendment

Damiano v. Grants Pass School District No. 7
No. 23-35288 (6/3/25)

The Ninth Circuit Court of Appeals reversed summary judgment for a school district in a lawsuit brought by employees alleging they were discriminated against for creating a video expressing their beliefs about transgender issues. In 2021, the Grants Pass School District circulated a memo on how employees should handle gender identity and pronoun issues. In response, employees Rachel Sager and Katie Medart used their own time and devices to create an "I Resolve" video that dissented from the memo and they corresponded about the video using their District email accounts during work hours. Several employees filed formal complaints against Sager and Medart alleging that they could not safely supervise transgender individuals, that they violated District policy on using District resources for political campaigns, that they violated the District's speech policy by not placing a disclaimer on the video stating it was not the official viewpoint of the District, and that they created a hostile environment for others. Additional complaints by students, former students, employees, and community members followed. An outside investigator concluded that Sager and Medart had violated various District policies. The District recommended termination to the Board, which voted to terminate. Two months later, the Board changed its position and voted to reinstate and involuntarily transfer them to positions in an online school. Sager and Medart sued the District, Superintendent, school principal, and three members of the Board, alleging First Amendment, Fourteenth Amendment, and Title VII violations. The District Court granted summary judgment in the District's favor, dismissing all claims. The Court of Appeals reversed summary judgment for the District but affirmed it as to the individual defendants. The Court held that there were genuine disputes regarding the circumstances of Sager and Medart's expressive conduct and the extent of the disruption to the school environment, such that

summary judgment was improper on the First Amendment retaliation and policy claims, but agreed that the individual defendants were entitled to qualified immunity. Next, the Court determined that there were genuine disputes regarding whether the District treated employees differently based on whether they endorsed the concept of shifting gender identity, such that summary judgment on the equal protection claim was improper. The Court then held that the trial court erred by dismissing the Title VII claim on summary judgment because the fact that Sager and Medart did not cite any Bible passage in their video was not fatal to making a prima facie religious discrimination case. Finally, the Court held that the trial court erred by determining that Board members could not be liable in their personal capacities for the terminations because Board decisions require a majority vote. Nevertheless, under the facts of the case, the Court affirmed that the Board members were entitled to qualified immunity and affirmed summary judgment in the Board members' favor for that reason.

Washington Supreme Court

Public Records Act

Citizen Action Defense Fund v. Washington State Office of Financial Management
No. 103370-2 (6/26/25)

The Washington Supreme Court held that collective bargaining proposals from state agency collective bargaining are exempt from disclosure under the deliberative process exemption of the Public Records Act (PRA) until they have been "implemented" by virtue of the legislature approving funding for the resulting proposed CBA in the state budget. Prior to June 2022, representatives from the Washington State Office of Financial Management (OFM) began negotiations with various labor unions representing state employees for the 2023-25 collective bargaining agreements (CBAs). The parties reached tentative agreements around October 1, 2022. Under the statutory process, the tentative agreements were sent to the governor, who presented the proposed budget to the legislature at the start of the legislative session in January 2023. The legislature approved the funds for the proposed budget in April 2023, and after the legislature approved the funding, the final CBAs were signed by the lead negotiators, union leadership, and governor. As this process was pending, in October 2022, Citizen Action Defense Fund (CADF) submitted a records request seeking the original proposals made by the State and unions for the 2023-25 bargaining cycle. OFM denied the request, explaining that the original proposals were exempt from production under the deliberative process exemption of the PRA, RCW 42.56.280, because the bargaining process was not yet complete. CADF filed a PRA lawsuit against OFM, arguing that the records were wrongfully withheld because the bargaining process was complete once the parties reached a tentative agreement, not when the agreements were ultimately approved under the statutory process. The superior court agreed with CADF and ordered OFM to produce the requested records and pay approximately $1,000 in statutory daily penalties and $33,000 in attorney fees. The Court of Appeals reversed, holding that the records were exempt. The Supreme Court affirmed the Court of Appeals. The Court focused on when the CBA can be "implemented," the point at which the deliberative process exemption would cease to apply. The Court held that under the specific statutory scheme governing state agency collective bargaining, implementation does not occur until the legislature approves OFM's requested funding for a proposed CBA. Here, because the records request was made months before the legislature adopted the budget funding the proposed CBAs, the deliberative process exemption applied.

Washington Court of Appeals

Public Records Act

Hood v. Stevens County
No. 39811-1-III (6/3/25) (unpublished)

The Washington Court of Appeals held that the statute of limitations in a Public Records Act (PRA) case had not begun to run where the agency had not provided a sufficient closing letter. In December of 2019, Eric Hood emailed a public records request to Stevens

County regarding a recent audit. After some correspondence and disclosure of some records, on January 6, 2020, a County employee emailed Hood with information regarding an email search and stated that "this search resulted in no responsive emails. We believe this completes your request." Hood responded by email, asking the County to search for hard copies. On March 16, 2020, the County provided additional hard copy records and stated that Hood could "search more State Auditor's Office documents online." A little less than one year later, on March 10, 2021, Hood filed suit against the County under the PRA. The County sought to dismiss the case on the grounds that Hood's complaint had been filed outside of the PRA's one-year statute of limitations. The County argued that its January 6 email closed the request and started the one-year statute of limitations clock, so Hood's filing in March of the following year was two months too late. The trial court agreed and granted the County's motion for summary judgment. However, after the trial court made its decision, the Washington Supreme Court issued *Cousins v. State*, a decision that set forth a three-part test to determine whether a closing letter is sufficient to trigger the statute of limitations. Under *Cousins*, a sufficient closing letter must include (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek review has started to run because the agency does not intend to further address the request, and (3) that the requestor may ask follow-up questions within a reasonable time frame. The Court of Appeals first held that although the Supreme Court wrote in its *Cousins* opinion that it did not "claim to impose a retroactive standard of strict compliance," *Cousins* could be applied retroactively to a request closed prior to *Cousins'* issuance. The Court then held that the County had fulfilled only one of the three requirements laid out in *Cousins*: that the request was being closed and the reason why. Therefore, the Court held that the January 6 closing letter did not trigger the statute of limitations, so the Court reversed the trial court's grant of summary judgement and remanded for further proceedings.

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