

## Appellate Division Significantly Expands Student Records Exemption

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It is widely accepted that student records are exempt from public access under OPRA, either under the Federal Education Rights and Privacy Act (“FERPA”) or New Jersey’s Pupil Records Act (“NJPR”). In other words, everyone accepts that students are entitled to privacy and that the public is not able to access grade cards, discipline records, and other sensitive information. However, when it comes to records that relate to an individual student but involve a significant expenditure of public funds, such as settlement agreements, most courts have permitted access to them so long as the record is redacted so that the student cannot in any way be identified.

Last week, however, the Appellate Division changed course when it issued L.R. v. Camden City Public School District. In a published decision that will be binding upon all trial courts, the Appellate Division shut down all access to any record that “relates” to an “individual student.” The public is no longer entitled to even a redacted copy of the record. Their reasoning? The NJPRA exempts “information related to an individual student” and a record still “relates” to an individual student even if it is de-identified. The Court explained its reasoning:

For example, a document reflecting a school district’s settlement of claims for special services by a hypothetical disabled student, Mary Jones, remains a “student record,” even if her name and other personal identifiers are removed from the settlement agreement. The record still “relates” to Mary Jones and discusses aspects of her life. The document does not cease becoming a “student record,” or change its fundamental character, even if, say, a redacting employee took an extra-wide marker to mask the child’s name, address, Social Security number, and other demographic information, or replaced the actual names within it with fictitious names. Jane Eyre surely was Charlotte Bronte’s novel even though it bore the pen name of “Currier Bell”; likewise the works of Samuel Clemens were no less his own despite

being issued under the pseudonym of “Mark Twain.”

Of course, we only know that Charlotte Bronte authored Jane Eyre because she revealed that fact. Had she chosen to remain anonymous, no one would know that Jane Eyre “relates” to Charlotte Bronte.

The problem with the decision is that it fails to consider NJPRA’s purpose: to provide students with “reasonable privacy.” N.J.S.A. 18A:36-19. That goal is fulfilled by de-identifying student records. Beyond our state courts, numerous federal courts have also held that a de-identified record no longer “relates” to an individual student and is thus no longer exempt under FERPA.

The Appellate Division’s decision is overbroad. It will exempt any and all settlement agreements relating to students. This means the public will have no way of monitoring how its school board is spending money. Did the school board pay its own attorneys \$200k to fight a trip-and-fall suit worth \$10k? The public will have no way to know, because now those settlements have now been rendered categorically exempt—despite the fact that the lawsuit itself was publicly filed and available through a courts record request.

School boards will no doubt utilize the L.R. decision to exempt all sorts of records. Was an individual student discussed in a closed session? If so, a school board will no doubt try to use L.R. to justify non-disclosure of those minutes—even though redaction would suffice to protect the student’s privacy.

The Appellate Division recognized that this case is worthy of Supreme Court review and stayed its decision. Hopefully, the Supreme Court will restore a common sense approach that protects the privacy of students, but also permits the public to provide financial oversight over school boards. In other words, redaction can simultaneously advance the NJPRA’s goal of ensuring a student’s reasonable privacy and OPRA’s goal of promoting transparency.