

ALERT

October 17, 2017

For Whom Does the Bell Toll?

OPRA, FERPA and the Student Record Exception

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On October 17, 2017 the New Jersey Appellate Division approved for publication its decision in L.R. o/b/o J.R. v. Camden City Public School District and three related cases, which held that special education settlements and requests for independent education evaluations constitute student records and are not subject to disclosure under New Jersey's *Open Public Records Act* ("OPRA") unless the plaintiffs can otherwise demonstrate an entitlement to those records. The school districts involved in these cases resisted disclosure on the basis that the records constituted "student records" and therefore were exempt from OPRA pursuant to New Jersey's Pupil Records Act ("NJPR").

This case, along with four other cases consolidated for purposes of oral argument and opinion, were considered the "test" cases for numerous other OPRA appeals across the state filed by The Innisfree Foundation ("Innisfree").

Innisfree argued that once personally identifying information was redacted from the settlements and the evaluation requests, the documents ceased to be "student records" and were therefore subject to release. School districts and parents alike expressed concerns that, even with redactions, individuals within the community would be able to determine the identity of the students.

The Appellate Division found that the nature of the requested documents did not morph into non-student records simply because the student's personally identifying information was redacted. Therefore, in order for Innisfree to obtain the records at issue it would either (i) have to qualify as a bona fide researcher, one of the authorized categories set forth in the regulations, or (ii) obtain a court order under New Jersey's common-law.

More importantly for school districts however was the Court's holding that, assuming that Innisfree was otherwise able to establish an entitlement to these records as a bona fide researcher or after obtaining a court order, the school district must give the student's parents three days' notice to comment upon the proposed redactions or otherwise move for a protective order. The touchstone

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consideration, according to the Court, is whether an individual in the community would be able to discern the identity of the student either because of specific circumstances or in conjunction with other documents that may be requested. This notice allows districts to carry out the objective of the NJPRA of achieving reasonable privacy for students and deter inadvertent disclosure of the student's identity.

School districts with questions about the decision or who require assistance in answering OPRA requests are welcome to contact any of SPSK's school law attorneys.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.