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C A S E A L E R T

SUPREME COURT RULES IN FAVOR OF M&W CLIENTS, AFFIRMS APPELLATE DIVISION DECISION RESTRICTING ACCESS TO STUDENT RECORDS

On July 17, 2019 the New Jersey Supreme Court issued its long-awaited decision in [L.R. v. Camden City Public School District](#), affirming the Appellate Division's determination that a "student record" under New Jersey law retains protected status and may not be rendered a public record through redaction of personally identifiable information. This ruling effectively prevents a third party from obtaining student records without demonstrating to a Superior Court Judge that the requestor is a "bona fide researcher" or otherwise has a compelling need for the records that outweighs the privacy interests of the students. It also shields school boards from awards of attorney fees under OPRA (the Open Public Records Act) to parties who succeed in their efforts to obtain student records.

[Raina Pitts](#) represented the Cherry Hill School District and [Eric Harrison](#) represented the Parsippany-Troy Hills School District in separate cases which were consolidated for appeal. Cherry Hill received from the Innisfree Foundation, a self-described advocacy organization, a request for copies of settlement agreements in special education cases. Parsippany-Troy Hills received from an attorney for L.R. - a resident of Camden - a request for copies of records relating to independent

education evaluations of special education students.

The attorney for L.R. asserted that his client sought these records from Parsippany-Troy Hills to assist her in her litigation with the Camden School District. This explanation strained credulity, and the trial court held that the attorney was the real party in interest. Nevertheless, the trial court ordered Parsippany Troy Hills to provide redacted records so long as plaintiff's counsel paid for the cost of redaction. The court also awarded OPRA prevailing party attorney fees to L.R.'s attorney.

In the Cherry Hill case, a different trial judge ruled that the settlement agreements should be redacted by the Board and handed over to Innisfree, awarding attorney fees to Innisfree as a prevailing party under OPRA.

Methfessel & Werbel appealed on behalf of both school districts. The Appellate Division reversed the trial court rulings to hold that such records are not available under OPRA. The panel remanded the cases for consideration of whether L.R. and Innisfree were entitled to student records under the New Jersey Pupil Records Act.

After granting certification and entertaining oral argument in January, a divided Supreme Court affirmed the Appellate Division to rule in favor of both school districts.

What application does this decision have to the management of future claims? Third parties who wish to obtain student records are well advised to include written consent from the parent of the minor student(s) whose records are sought. Without such consent, school districts should be guided by the following approach:

- i. The school district should decline to release such records without a court order determining that the requestor is a “bona fide researcher” or that the interests of the requestor outweigh the privacy interests of the students;
- ii. If the requestor files legal action seeking the records, upon consultation with the Board Solicitor, the district should send

written notice to the parents of any students (or the students themselves if over 18 years of age) whose records fall within the scope of the request that such records may be released and that the students may voice any objection or concern in writing to the district and the court; and

- iii. Any records ultimately released, whether by court order or on account of the requestor’s authorized status as a bona fide researcher, should be heavily redacted to remove all personal identifiers. Should there be any dispute over the extent of redaction, the district should seek a judicial ruling.

If anyone has any questions about this landmark decision, please contact [Raina M. Pitts](#) or [Eric L. Harrison](#). Both can be reached at (732) 248-4200.

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