
Michigan Court of Appeals Examines FERPA "School Records" and FOIA Privacy Exemptions

By Amy L. Wesaw / Jun 28, 2019

On March 21, 2019, the Michigan Court of Appeals resolved a dispute involving the Family Educational Rights and Privacy Act (FERPA) and a Michigan Freedom of Information Act (FOIA) request. *Doe v Unnamed School District*, 2019 WL 1302114 (unpublished). The FOIA request sought disclosure of letters regarding plaintiffs' "access or lack thereof to [Defendant's] school district property." The lower court dissolved a temporary restraining order and instructed the school district to release the documents with redaction of a student's name and plaintiffs' names and addresses.

Plaintiffs argued the release violated FERPA because it disclosed "education records." The Court of Appeals explained the letters, written to plaintiffs, did not qualify as "education records" as they contained no "information *directly* related to a student." Rather, the student's name was only incidentally included as context for *plaintiffs'* appropriate access to defendant's property. Accordingly, the records were not subject to either FERPA or the mandatory exemption under FOIA.

Plaintiffs also argued the unredacted disclosures violated FOIA's privacy exemption, which requires (i) "information of a personal nature" and (ii) that the disclosure "would be a clearly unwarranted invasion of privacy." According to the Court of Appeals, even assuming the information was of a personal nature, its disclosure was not clearly unwarranted under the core purpose test which "balances the public interest in disclosure against the interest the Legislature intended to protect by way of the exemption." Under that test, the documents failed to meet the exemption because they "serve[d] the core purpose of FOIA by facilitating public understanding of defendant school district's operations and policies, particularly with respect to the security and public accessibility of school property." However, the Court of Appeals found the redactions of student identifying information appropriate under FOIA's discretionary exemption.

This case provides insightful clarification of "school records" under FERPA and direction for resolving disputed disclosures when privacy consideration issues are raised.

If you have any questions regarding FERPA or FOIA privacy exemptions, please contact your Clark Hill PLC education law attorney.